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




THE  
SETTLEMENT LAWS OF  
MASSACHUSETTS

IN THEIR APPLICATION TO POOR RELIEF  
OUTSIDE INSTITUTIONS

WITH CITATION OF SOME OF THE LEADING JUDICIAL DECISIONS IN  
THE LAST THIRTY YEARS, AND PRACTICAL SUGGESTIONS  
TO VISITORS AMONG THE POOR

  
BY HENRY SHAW, M.D.

*Ex-Settlement Clerk and Visitor for Overseers of the Poor in the City of Boston*  
*Member of Massachusetts Relief Association*

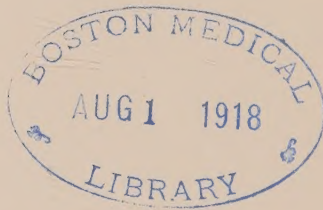
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## INTRODUCTION.

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IN closing an account of the Public Charities of Massachusetts, printed by the Commonwealth for use at the Centennial Exposition of 1876, and covering the whole period of our existence as an organized community, I had occasion to say that "it is the whole people of Massachusetts, rather than any personages, however powerful, gifted, or generous, who have created, and do now sustain, the great fabric of our charities." And I went on to add that "in the broad philanthropy, the kindly and shrewd intelligence, the deep sympathies, the plain good sense, the practical Christianity of this people, will be found the moving cause of all that has been done to relieve suffering and to elevate mankind in our Commonwealth." True then, these remarks are no less true now. They were called out by a long and close observation of the statutes of Massachusetts for the relief of the poor, and an acquaintance (now much more extensive) with the Overseers of the Poor, and those others, official or private persons, and many of them women, who administered our statutes or supplied the deficiency of laws by private benevolence, and what the Church emphatically calls "good works." Among all these persons, numbering thousands during the period of thirty-six years since I began as a State official to study and direct public charity, I have known none more faithful in his varied duties or more competent from his character and experience to set forth in a concise Manual the present Poor Law of Massachusetts, interpreted by its indwelling spirit, than Dr. Henry Shaw, the author of the following pages.



It is much for the administrator of our complicated system, especially if he deals directly with the poor, the unfortunate, and the vicious, to have had a medical education and the various and pathetic experiences of a country doctor. Much of the public poverty comes from disease, direct or indirect, and is to be met and relieved — or denied relief — in the plain, familiar way of the good physician. Dr. Shaw had this qualification for his official task ; and his service for years in the United States Navy added to his opportunities and increased his usefulness. To this were joined a penetrating and inquisitive mind, a memory vastly retentive of details as well as of principles, and a sympathy with human infirmities, without which the visitor among the poor might almost as well be made of wood and leather as of flesh and blood. To these traits, in their combination, is due that singular appreciation of the law and the fact, the aim and the means, which I am sure the attentive reader will find in this book, and which gives it both a practical value and a moral interest.

It is often alleged against our perplexed labyrinth of poor laws and settlement cases that they are too difficult of comprehension, too infinite in detail ; and a cry is heard every now and then : “ Away with them ! Why cumber they the ground ? ” But they do *not* cumber the ground, or anything else but the unfaithful or incompetent official. Their intricacy is one of their merits ; for it prevents that easy disposal of a case, with no real knowledge of its nature, which opens the door to every sort of abuse in dealing with pauperism. Under our system of pauper genealogies and marital dependences and legal surprises, it becomes usefully impossible to speak of the “ annals of the poor ” as “ short and simple ” : they stretch out unto children’s children and remote generations, and it is only when we understand the relationships of each case that we can properly apply the public or the

private remedy. The traditional Irishman, who thought he could play the fiddle because "it looks aisy," is the type of the Overseer of the Poor who expects to dispose off-hand of the thousand-and-one conditions which make up the sum of pauperism in a single instance. "In the time of adversity *consider*," is a good scripture. The adversity of the poor family is to be very seriously considered, if you are not to do more harm than good by your action. The intricacies of our pauper law, which recent amendments seem to have increased, make close consideration of each case absolutely needful; and this is a merit, not a defect.

But the more streets and alleys a town has, the more need of maps and guide-boards; and it is precisely this service which Dr. Shaw's Manual will render. The instructed (of whom in former years I might pass for one) will find that it goes beyond their heap of knowledge; and the uninstructed (of whom many come into official activity each year, unless things have changed) will find its manifold information indispensable. And, in reading it, I learned that a subject in itself technical can be made deeply interesting by the manner of treating it.

F. B. SANBORN.

CONCORD, MASS., Oct. 10, 1899.





## PREFACE.

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It is now more than thirty years since the Hon. George S. Hale compiled for the Overseers of the Poor of Boston the invaluable manual which contained the history of the Massachusetts Settlement Law, for the years before 1866, with citations of decisions explaining the different statutes, and some comment on the historical relation of the succeeding enactments.

Since that time, with the exception of a new edition of Crocker's Notes on the Statutes, the compact and important manuals printed by the Board of State Charities, and more than one summarized statement of the gist of the Statutes pertaining to Settlement, issued for the guidance of visitors in the Associated Charities, there has been little published in collected form that will aid the student who wishes to learn the course and development of recent legislation.

For these details he must search the annual blue books, the reports of decisions, the manuals of the Board of State Charities, and the appendices of the annual reports of some of the larger cities, in all of which places he will find, in fragmentary form, the most valuable material.

When we remember that, in this period of one generation of men, there has been enacted more evolutionary legislation relative to settlements than in the two hundred preceding years, the necessity of gathering in all this scattered material and arranging it into some order and sequence must be plain to all; and it is much to be wished that some lawyer, with the experience and training of Mr. Hale, would prepare a work that should be a proper supplement to his book.

But the pecuniary inducement for such a labor is of the smallest ; and, if one properly equipped for the service were to do it, he would have to seek for his compensation where all the voluntary workers in fields of charity look,—to rewards that do not increase the bank account.

To the preparation of a complete work of this nature, this book would be a great help ; but it does not claim to supply its place. Composed and arranged, as it has been, in half-hours snatched from engrossing occupation, it would be strange if the careful reader should not see, here and there, evidences of that fact.

Scattered through the work, the reader will find guesses and opinions hazarded upon the subjects under discussion, which are to have no more force in his mind, when unaccompanied by citation of authority, than his own good sense gives to them ; and it is proper to add here that no man or body of men is in any degree responsible for any opinion advanced, save the author only. But he cannot deny to himself the privilege of returning his heartfelt thanks to the anonymous friend who has constantly aided him with counsel and direction in technical points ; and regrets that he cannot print here a name that would cause his readers to join in the acknowledgment and to testify to its value.

Persons who look on from the outside are wont to speak of these investigations as dry and uninteresting by reason of their abundant technicalities. It is out of a mind impressed with the vital interest of these cases, when properly seen, that the writer ventures to dispute that common but somewhat superficial view ; and if, even at the expense of some loss of legal precision, he has imparted through the medium of narrative form and direct illustration a greater sense of human interest to his subject, his purpose is entirely effected.

CHARITY BUILDING, BOSTON, Sept. 25, 1899.

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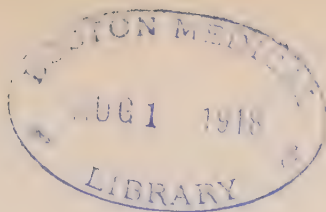
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## THE PRESENT SETTLEMENT LAW OF MASSACHUSETTS.

### PUBLIC STATUTES, CHAPTER 83.

#### *Of the Settlement of Paupers.*

SECTION I. Legal settlements may be acquired in any city or town, so as to oblige such place to relieve and support the persons acquiring the same, in case they are poor and stand in need of relief, in the manner following, and not otherwise: namely,—

*First.* A married woman shall follow and have the settlement of her husband, if he has any within the State: otherwise her own at the time of marriage, if she then had any, shall not be lost or suspended by the marriage.

*Second.* Legitimate children shall follow and have the settlement of their father, if he has any within the State, until they gain a settlement of their own; but, if he has none, they shall in like manner follow and have the settlement of their mother, if she has any.

*Third.* Illegitimate children shall follow and have the settlement of their mother at the time of their birth, if she then has any within the State; but neither legitimate nor illegitimate children shall gain a settlement by birth in the place where they are born, if neither of their parents then has a settlement therein.

*Fourth.* Any person of the age of twenty-one years, having an estate of inheritance or freehold in any place within the State, and living on the same three years successively, shall thereby gain a settlement in such place.

*Fifth.* Any person of the age of twenty-one years, who resides in any place within this State for five years together, and pays all State, county, city or town taxes, duly assessed on his poll or estate, for any three years within that time, shall thereby gain a settlement in such place.

8 Allen, 551.

99 Mass. 587.

105 Mass. 293.

107 Mass. 598.

126 Mass. 477.

## CHAPTER 425, ACTS OF 1898.

### *Amending Clause Fifth.*

SECTION I. Clause fifth of section one of chapter eighty-three of the Public Statutes is hereby amended by inserting after the word "and," in the second line, the words "within that time," so that the clause as amended shall read as follows: *Fifth.* Any person of the age of twenty-one years, who resides in any place within this State for five years together, and within that time pays all State, county, city or town taxes, duly assessed on his poll or estate, for any three years within that time, shall thereby gain a settlement in such place.

## CHAPTER 83 *continued.*

*Sixth.* Any woman of the age of twenty-one years, who resides in any place within this State for five years together, shall thereby gain a settlement in such place.

*Seventh.* The provisions of the preceding clause shall apply to married women who have not a settlement derived by marriage under the provisions of the first clause, and to widows; and a settlement thereunder shall be deemed to have been gained by an unsettled woman upon the completion of the term of residence therein mentioned, although the whole or a part of such term has already elapsed.

*Eighth.* Any person being chosen, and actually serving one whole year in the office of clerk, treasurer, selectman, overseer of the poor, assessor, constable, or collector of taxes, in any place, shall thereby gain a settlement therein. For this purpose a year shall be considered as including the time between the choice of such officers at one annual meeting and the choice at the next annual meeting, whether more or less than a calendar year.

*Ninth.* Every settled ordained minister of the gospel shall be deemed to have acquired a legal settlement in the place wherein he is or may be settled as a minister.

*Tenth.* A minor who serves an apprenticeship to a lawful trade for the space of four years in any place, and actually sets up such trade therein within one year after the expiration of said term, being then twenty-one years old, and continues there to carry on the same for five years, shall thereby gain a settlement in such place; but being hired as a journeyman shall not be considered as setting up a trade.

*Eleventh.* Any person who was duly enlisted and mustered into the military or naval service of the United States, as a part of the quota of any city or town in this Commonwealth, under any call of the President of the United States during the late Civil War, or duly assigned as a part of the quota thereof after having been enlisted and mustered into said service, and who duly served for not less than one year, or died or became disabled from wounds or disease received or contracted while engaged in such service, or while a prisoner in the hands of the enemy, and his wife or widow and minor children shall be deemed thereby to have acquired a settlement in such place; and any person who would otherwise be entitled to a settlement under this clause, but who was not a part of the quota of any city or town, shall, if he served as a part of the quota of the Commonwealth, be deemed to

have acquired a settlement in the place where he actually resided at the time of his enlistment. But these provisions shall not apply to any person who was enlisted and received a bounty for such enlistment in more than one place, unless the second enlistment was made after an honorable discharge from the first term of service, nor to any person who has been proved guilty of wilful desertion, or who left the service otherwise than by reason of disability or an honorable discharge.

*Twelfth.* Upon the division of a city or town, every person having a legal settlement therein, but being absent at the time of such division, and not having acquired a legal settlement elsewhere, shall have his legal settlement in that place wherein his last dwelling-place or home happens to fall upon such division; and when a new city or town is incorporated, composed of a part of one or more incorporated places, every person legally settled in the places of which such new city or town is so composed, and who actually dwells and has his home within the bounds of such new city or town at the time of its incorporation, and any person duly qualified as provided in the eleventh clause of this section, who at the time of his enlistment dwelt and had his home within such bounds, shall thereby acquire a legal settlement in such new place; but no person residing in that part of a place which upon such division is incorporated into a new city or town, and having then no legal settlement therein, shall acquire any by force of such incorporation only; nor shall such incorporation prevent his acquiring a settlement therein, within the time and by the means by which he would have gained it there if no such division had been made.

SECT. 2. Nothing in the preceding section shall be construed to give to any person the right to acquire a settlement, or to be in process of acquiring a settlement,



while receiving relief as a pauper, unless within five years from the time of receiving such relief he reimburses the cost thereof to the city or town furnishing the same.

SECT. 3. No person who actually supports himself and his family shall be deemed to be a pauper by reason of the commitment of his wife, child, or other relative to a lunatic hospital or other institution of charity, reform, or correction by order of a court or magistrate, and of his inability to maintain such wife, child, or relative therein; but nothing herein contained shall be construed to release him from liability for such maintenance.

SECT. 4. No person who has begun to acquire a settlement by the laws in force at and before the time when this chapter takes effect, in any of the ways in which any time is prescribed for a residence, or for the continuance or succession of any other act, shall be prevented or delayed by the provisions hereof; but he shall acquire a settlement by a continuance or succession of the same residence or other act, in the same time and manner as if the former laws had continued in force.

SECT. 5. Except as hereinafter provided, every legal settlement shall continue till it is lost or defeated by acquiring a new one within this State; and upon acquiring such new settlement all former settlements shall be defeated and lost.

SECT. 6. All settlements acquired by virtue of any provision of law in force prior to the eleventh day of February in the year seventeen hundred and ninety-four are hereby defeated and lost; except where the existence of such settlement prevented a subsequent acquisition of settlement in the same place under the provisions of the fourth, fifth, sixth, eighth, ninth, tenth, eleventh, and twelfth clauses of section one of this chapter, or under corresponding provisions in other statutes existing prior to the passage hereof; and *provided*, that, whenever a

settlement acquired by marriage has been thus defeated, the former settlement of the wife, if not defeated by the same provision, shall be thereby revived.

CHAPTER 425, ACTS OF 1898.

*Amending Sections Six, Chapter 83, and Sections Six, Seven, and Eighteen, Chapter 84, Public Statutes.*

SECT. 2. Section six of said chapter is hereby amended by striking out the whole of said section and inserting in place thereof the following: *Section 6.* All settlements not fully acquired subsequent to the first day of May in the year eighteen hundred and sixty are hereby defeated and declared to be lost, except where the existence of such settlement prevented a subsequent acquisition of settlement in the same place: *provided*, that, whenever a settlement acquired by marriage has been thus defeated, the former settlement of the wife, if not defeated by the same provision, shall be thereby revived. All persons absent from the Commonwealth of Massachusetts for ten years in succession shall lose their settlement.

SECT. 3. Section six of chapter eighty-four of the Public Statutes is hereby amended by adding at the end thereof the words: "and hereafter the same legal obligation to support her pauper children shall rest upon the mother as now by law rests upon the father: *provided, however*, that the mother shall not be liable to criminal prosecution for the enforcement of such legal obligation," — so as to read as follows: *Section 6.* The kindred of such poor persons, in the line or degree of father or grandfather, mother or grandmother, children or grandchildren, by consanguinity, living in this State and of sufficient ability, shall be bound to support such paupers, in proportion to their respective ability, and hereafter the same legal obligation to support her pauper children shall

rest upon the mother as now by law rests upon the father : *provided, however*, that the mother shall not be liable to criminal prosecution for the enforcement of such legal obligation.

SECT. 4. Section seven of said chapter eighty-four is hereby amended by striking out the whole of said section and inserting in place thereof the following : *Section 7.* Any justice of the superior court sitting in equity in the county where any one of such kindred to be charged resides, upon complaint of any city, town, or kindred who has been at expense for the relief and support of such pauper, may on due hearing assess and proportion thereto such sum as he shall deem reasonable for or towards the support of the pauper to the time of such assessment, and may enforce payment thereof by execution in common form : *provided*, that such assessment shall not extend to any expense for relief afforded more than two years previous to the filing of the complaint.

SECT. 5. Section eighteen of said chapter eighty-four, as amended by section one of chapter ninety of the acts of the year eighteen hundred and ninety-one, is hereby amended by striking out the whole of said section and inserting in place thereof the following : *Section 18.* A city or town may furnish aid to poor persons found therein, having no lawful settlement within the State, if the overseers of the poor deem it for the public interest ; but, except in case of sickness, not for a greater amount than two dollars a week for each family during the months of May to September inclusive, or three dollars a week for the months of October to April inclusive, and the overseers shall in every such case give immediate notice by mail to the State Board of Lunacy and Charity, which board shall examine the case, and should they direct discontinuance shall remove such persons to the State almshouse or to any State or place where they belong, when the neces-

sities of such persons or the public interest require such removal, and the superintendent of said almshouse shall receive the persons so removed thereto the same as though sent in accordance with the provisions of section twenty-one of chapter eighty-six of the Public Statutes, as amended by chapter eighty-four of the acts of the year eighteen hundred and ninety-one, and a detailed statement of expenses so incurred shall be rendered, and after approval by the State Board of Lunacy and Charity such expenses shall be paid from the State treasury. (Approved May 13, 1898.)

#### CHAPTER 354, ACTS OF 1898.

##### *An Act Relative to the Funeral Expenses of Paupers.*

*Be it enacted, etc., as follows :*

Section seventeen of chapter eighty-four of the Public Statutes, as amended by chapter three hundred and ten of the acts of the year eighteen hundred and eighty-seven, and by chapter seventy-one of the acts of the year eighteen hundred and ninety, is hereby amended by striking out the whole of said section and inserting in place thereof the following: *Section 17.* The overseers of the poor of each place shall also relieve, support, and employ all poor persons residing or found therein, having no lawful settlements within this State, until their removal to the State almshouse, and in case of their decease shall decently bury them; they shall also decently bury all such persons who have died without means of support, but without applying for public relief while living, and all unknown persons found dead; the expense whereof may be recovered of their kindred, if they have any chargeable by law for their support, in the manner hereinbefore provided; and if in case of their burial the expense thereof is not paid by such kindred, there shall be paid from the

treasury of the Commonwealth an amount not exceeding fifteen dollars for the funeral expenses of each pauper over twelve years of age, and an amount not exceeding ten dollars for the funeral expenses of each pauper under that age. (Approved April 21, 1898.)

#### CHAPTER 391, ACTS OF 1898.

*An Act Relative to the Support of State Poor by Cities and Towns.*

*Be it enacted, etc., as follows :*

Section twenty-six of chapter eighty-six of the Public Statutes, as amended by chapter two hundred and eleven of the acts of the year eighteen hundred and eighty-five, and by chapter one hundred and fifty-three of the acts of the year eighteen hundred and ninety-one, is hereby amended by inserting after the word "the," in the first line, the word "reasonable," and by striking out all of said section after the word "Commonwealth," in the sixth line, and inserting in the place thereof the words: "The bills for such support shall not be allowed unless they are indorsed with the distinct declaration that, after full investigation, no kindred able to pay the amount charged have been found, and that the amount has actually been paid from the city or town treasury, nor unless they are approved by the State board or by some person designated by it; and not more than five dollars a week shall be allowed for the support of a person in a city or town hospital,"—so as to read as follows: *Section 26.* The reasonable expense incurred by a city or town under the provisions of the preceding section, within five days next before notice has been given as therein required, and also after the giving of such notice and until said sick person is able to be removed to the almshouse, shall be reimbursed by the Commonwealth. The bills for such support shall not be allowed unless they are indorsed with a distinct declara-



tion that, after full investigation, no kindred able to pay the amount charged have been found, and that the amount has actually been paid from the city or town treasury, nor unless they are approved by the State board or by some person designated by it; and not more than five dollars a week shall be allowed for the support of a person in a city or town hospital. (Approved April 29, 1898.)

[In the appendix will be found the principal settlement laws enacted since 1865, so far as they deal with the poor not in institutions, together with the most recent law for State and military aid. At the end of these are sundry recent opinions of the Attorney-general, interpreting an official view of the effect of recent enactments; and these are of great value as showing the lines on which the State officers will, in future, administer the law.

It is much regretted that the plan of this work has prevented the admission of many enactments pertaining to allied subjects often directly connected with this, as those of military aid, of support of the insane, and the care and maintenance of unfortunate children.

It might seem, at first sight, that the assembling of these older statutes has an historical rather than a practical value, and that the careful placing of a date of enactment after each is a refinement of superfluous accuracy. The author begs his reader to remember, if he has the care of the interests of his town in his charge, that the exact date in which the statute of 1879, for instance, took effect, which fact the Public Statutes will not give him, will more than once be necessary for him to know, and to compare with his evidence of death, in order that he may determine the status of a distressed family.]

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1. For the purpose of convenient reference the present statute of settlement is placed at the beginning of this section, with the principal amendments of 1898 immediately following the sections amended.

But, before considering the statutes and decisions relating to settlements, it will forward the end in view if some time is spent in remark on the best methods of investigation of applications for aid. This is the more expedient because the great general principles on which conclusions are founded can be more clearly indicated in a continuous statement than in detached notes upon special provisions of the statutes. A reason more conclusive still for this course will be found in the fact that some provisions of former statutes of settlement, not included in the codification of 1878, are yet by decisions included in the body of the present settlement law.

#### METHODS OF INVESTIGATION.

2. As it is impossible to frame a set of questions that will cover any considerable number of investigations, so it is not practicable to suggest, in a treatise like this, the various lines of investigation that different cases will make necessary. As little as a doctor, called to a case of sickness, can tell into what part of the system his investigations will lead him, can the searcher for a settlement predict along what line, of the many possible, his inquiry will run. He must go to his case armed with the rules covering his investigation, and then allow the answer of each question to govern the next question.

#### KINDNESS AND TACT.

3. It will be well for the visitor to remember that the persons to whom he goes are entitled to kindness and courtesy on his part; and he will be careful to exercise these, if not because he feels a real sympathy with suffering and sorrow, then for the still sufficient reason that his truest success is possible only by a show of these virtues. He will find his applicants depressed by sorrow, angry with themselves and with the world, willing to take arms

against a sea of troubles by finding fault with the first stranger whom they see, morbidly anxious to conceal the skeleton in the closet, or to prevent their dead parents from being drawn into the disgrace in which they find themselves involved, and through all this outwork of defence he must find his way to their confidence and goodwill, or must fail in his mission. Some visitors who go into the houses of the poor, stand in the middle of the floor with their hats on, and ask their questions with a brusque air of official authority, wonder that they fail to get the intimate facts that freely come out under a more humane inquiry. If a visitor cannot feel touched with some sense of pity for human infirmity and weakness, he may well despair of easy success in his calling; and he will often have occasion to compare his meagre results with the complete record of one who is at home among the poor. The successful visitor knows how a word of friendly interest — not in the line of his investigation — serves as a breach in the defensive works, and often proves how surely and absolutely he may open the gates of the city by the smallest show of interest in the little children.

#### IGNORANCE AND MISREPRESENTATION.

4. In addition to the hindrances that sensitiveness and self-respect impose, the visitor must be prepared to meet ignorance and incapacity to state the things that it is proper for him to know, and to patiently use his own better skill to establish the necessary facts. Too often for his faith in human nature, he will encounter wilful deception and fraud, and will often find his most satisfactory work in the placing of truth and right in their proper position.

The power of human sympathy, which, in its proper exercise, stops a long way short of indifference to wrong-doing, begets naturally a capacity to place ourselves in the posi-

tion of another; and this is of primary importance in investigations among the poor.

5. Even the good priest, in Chaucer, that eternal model and pattern for one who would do good in the best way among the lowly and "obstinate," did not forget, even when "wonder patient," that there might at any time be a condition in which to

"Snybben sharply for the nones"

would be the only thing to do.

6. The visitor will find that his clients are no exception to the rule that every living thing seeks to protect himself from invasion, and is endowed with some faculty that helps to that end.

As the fiercer animals have teeth and claws, those more timid speed and cunning, the bird the power of flight, and the weakest insect on the earth has at least the protective influence of color similar to his surroundings, by which he cheats his enemies and manages to live, so these people who merely want aid, and not to be put on the rack as a condition of obtaining it, parry and fence, or even thrust, in order to avoid the necessary conditions.

The men would not be men if they did not bluster and swear and lay the blame of their present condition on every shoulder except their own; and the women, as a rule, wheedle, and appeal to the sympathies rather than attempt to take the kingdom by violence.

7. But it is not by any means the fraudulent and unworthy alone who use these or similar tactics; and, if the visitor will ask himself—far as he feels himself removed from the condition of his clients—such questions as these, the answers must modify his methods and his manners: How would I like to have a stranger come in and investigate my weaknesses and transgressions? If for many years I have been living with this woman not

my wife, is it not enough that the ugly fact gnaws at our own breast night and day, but I must confess it to a man whom I never saw till now? Such considerations as these, not imaginary, but almost every day practical, must modify our conduct, if they have their proper humanizing effect.

8. Real or affected interest in the poor, then, we must have; and a natural endowment saves us the necessity of acting a part among people made shrewd by their misfortunes and faults. And when the person concerned is dead or gone away, and we have to approach an innocent sister or a distressed parent, and ask them to help us on our way, I know of no word of sympathy or regret at the necessity that is too tender to be spoken, if it comes from the heart.

#### AVOID UNNECESSARY QUESTIONS.

9. There is a prying and gossiping investigation of uncomfortable details for their own sake, without regard to the necessities of the case, which should be as far from the thoughts of the visitor as is the just suspicion of it from the mind of the applicant.

10. Perhaps after some question he will be met with the inquiry, "Why is it necessary to go into that?" and it will be wise for him to answer that he has no more personal interest in this detail than in the same applying to any other stranger, adding that he is careful to ask no more than his duty requires.

#### CREATE A COMMON INTEREST BETWEEN VISITOR AND APPLICANT.

11. Sometimes when all the questions about the immediate family are asked and truthfully answered, and the ancestry of husband or wife comes under consideration, the question is abruptly asked (perhaps with some mem-



ory of early hope blasted or of marriage against the wish of parents), "Why is it necessary to drag my parents into this?" and then the visitor will be able to go on with the investigation if he suggests that he comes as the friend of the applicant, to put his rights on record; and that, if the applicant does not need the records, his children at some future time may, and it is their right that they should be preserved.

MAKE INVESTIGATIONS FORWARD, NOT BACK.

12. In all matters of detail affecting family history, it cannot be too strongly recommended that the investigation, starting from a fixed point, as birth or landing or marriage, should come forward month by month or year by year to the present time. The other method, perhaps the more common, of going back from the present, soon involves the unpractised narrator in contradiction and confusion; and the method in which the order of living re-enforces technical memory is much to be preferred. As it is only by long practice that one learns to run backward half as surely and as fast as he can forward with his feet, so in the matter of living he will go from house to house and from town to town much more readily and surely than he will reverse the process.

WAYS OF PROVING RESIDENCE, BIRTH OR DEATH RECORDS,  
RENT BILLS, ETC.

13. As so much of settlement investigation turns upon proof of continuous residence, some suggestions as to the various methods of establishing residence will perhaps be useful, especially as the visitor will continually find his applicants unable to tell even so much as whether they came to a given place in spring or fall. Rent bills and tax bills combined with verbal evidence are conclusive; but it often happens, especially in the cities, that no rent

bills ever were given, and the tax bills do not cover the full alleged time. In this case the testimony of a credible neighbor, who perhaps fixes the fact by a birth or death in her own family, will establish the necessary date. Or the birth or death of a child in the family of the applicant, duly recorded by clerk or in the church, will have the same effect. The admission of a child to school and the record of its name on the register would be good evidence of residence, as would also charges in a grocery or fuel store. The charge of the teamster or railroad which moved furniture with the date established has fixed more than one status; and, if the applicants claim dates from the time of landing from a foreign port, the name of the ship and other data connected with it (as port from which arriving, other members of the family who came at that time, names of other passengers, and season of the year) will place the date beyond doubt.

#### EVIDENCE BY DIRECTORY.

14. It is doubtful what the courts will say about an offer to prove residence by evidence of directory. It seems like almost conclusive evidence, and is so generally received between municipalities; but, judging by analogy, a town would not be allowed to set up that proof, for where one brought suit for fraudulent action against a man in Boston, who was said to have represented himself as a lawyer, the court would not allow the plaintiff to prove that the name of the defendant was so borne in the directory of the year named, on the ground that there was no evidence connecting the defendant with the printing, the court saying, in its opinion, that the name might have been given to the canvasser by a man standing in the street doorway. As it would be practically impossible, at the end of five or ten years, to connect a directory record with any explicit direction to the

canvassing agent, it would appear that such evidence is merely confirmatory. This was a case in the Superior Court, and there is no printed report in legal form of the decision.

#### THE MORE COMMON MISREPRESENTATIONS.

15. It will often happen, without suspicion on the part of the visitor, that a history will be given that proves, on investigation, to be false in some vital particular. It may be that the person applying gives residences correctly and date of marriage and christened names of children, but changes his family name, perhaps because he does not want his family to know his condition. Or he may have been aided years ago, and have left a bad reputation at the relieving board. Or he may have a wife living, and the woman with whom he lives may have a similar reason for misrepresentation. These are the most difficult cases to investigate, when natural incapacity is re-enforced by a motive for deception. But they will not be found in the end to be insoluble; for the trained intellect of the visitor is superior in power and resource to that of the deceiver, whose experience has taught him only one hole of retreat, while the knowledge of his visitor has shown him five or six, in one of which he will surely find his man.

16. It is an interesting fact, having perhaps some future promise in the line of imaginative effort, that some of the very best of these attempts at deception are by young girls, intent on concealing the consequences of that want of knowledge of the world which their experience confesses. One of these, who divested herself of family name, and stole that of an acquaintance, born in another part of the State, learning enough of the history of her friend against the time when she might be questioned, seemed wonderfully like the hermit-crab, which

covers its unprotected rear with a stolen shell ; and in that safe disguise she cost a world of trouble in investigation. In the end she was very glad to leave her refuge, and in some anger ; for the person whose name she had taken proved to have had so much worse antecedents than herself, having lately passed a whole year in Sherborn Prison, that the cave of refuge became a cell of torture.

AVOID INTERRUPTING THE STORY.

17. In these cases of wilful misleading, where it is an avowed battle of intellect, it is not best to give the other the advantage of wariness that a continual incredulity suggests. Rather will the visitor allow the stream of simulated truthfulness to go trickling on at its own sweet will, until the carelessness of security drops a compromising inconsistency. Thus, to refer to a recent experience : "Where were you born?" "Cape Breton." "Father's name?" "Joseph L.H." "Your name?" "Emily D." "Then you are married?" "Yes." "When and where?" "Buffalo, 1895." "Where is your husband now?" "Somewhere in New York State." "What is his name?" "George D." "Your brother Joseph lives over in Medford, doesn't he?" "Yes." "He was over in town last night, inquiring after you, and found out where you are. What is Joseph's last name?" "D." "How can his name be the same as yours, D., if you are married?" Then rapidly, "It is of no use to say what is not true about these things : they are all matter of record, and, if you deceive about them to-day, you are found out to-morrow." (Excusatory.) "You have to say you are married, or they will not take you in." "Well, after the story has served its purpose, I would not go on telling it."

18. This was not a person skilful to deceive, for her refuges were shallow enough ; but, whether shallow or

profound the applicant, the visitor may assure himself that she will keep from him what she can, and will tell no more that compromises herself than she thinks is already known or can be proven.

#### AVOID DISPLAY OF YOUR OWN IGNORANCE.

19. Taking advantage of this principle, the visitor in these doubtful cases will always do well not to too openly display how little he already knows, but will by cautious questioning, suggesting without stating further knowledge, lead up to facts which he could never otherwise learn.

*Example.*—A bed-ridden woman receives a weekly allowance of money, paid to her poor widowed sister, who cannot support her. She is in a hopeless condition so far as improvement is concerned, and is visited, generally, only once a year. Seen in May, she is asked if her circumstances are changed since a year before, and especially if she has any income from any other source, both which questions she answers, squarely, in the negative. Her sister is gone out; and, as there is some other business with her, the visitor sits in the room adjoining the bedroom, with the unmarried adult daughter of the sister, the door of the bedroom being shut.

This conversation ensues: "I think your mother is very good to care for her sister as she does, for she must be very heavy to lift about. And she gets no more from any source than what she has always had?" "Only what Aunt Lucy left in her will: I suppose you know about that?" "I never have heard the exact sum." (Drop a tear, recording angel, if you can wring one out.) "Well, when she died in September, she left her one dollar a day for the rest of her life."

(Scene now in bedroom again): "I understood you to say you got no aid on'y that of which I knew." "I do not, from any public source." "I did not limit my question



in that way." "Well, what my family do for me I do not think is anybody's business."

Here to have confessed the actual ignorance to the niece would have been at once fatal.

#### MARITAL CONDITIONS OF COLORED APPLICANTS.

20. There is no class with whom these tactics are more indispensable than among colored applicants, and this mainly because of the incredible levity with which marriage arrangements are made and dissolved by them. It is not that they live in open relations of illegal cohabitation, for they are not more liable to this charge than are many other races; but it is through their singular attachment to religious forms, joined to their insensibility to the principles of good morals, that they arrive, through processes apparently legal, at illegal results. Thus, in any random ten applications for aid by colored people, it will be possible in five or more to show that the legal results of marriage or birth do not follow, because the ceremony of marriage, duly performed, was not legal by reason of one or the other or both of the contracting parties then being under the obligation of an undissolved marriage contract.

#### IT IS BETTER TO ASSUME THE FACT.

21. In getting at this fact, it will generally be useless for the investigator to ask the question direct; for the person questioned will at once infer that the former marriage is unknown to the questioner, and may just as well remain so. Under these circumstances the direct question, "Were either of you married before?" is very sure to be met by a direct negative. But if instead the question is asked: "Where were you living when your first husband left you? Or did you leave him?" it will often occur that the answer will come, obviously truthful, "neither was

married before," and no hurt is done by the question. But in the other case the question is pretty sure to bring some compromising or hesitating answer that will suggest a further clew.

#### TRY FOR CORROBORATIVE DETAILS.

22. The questioner should remember always, in this effort to bring out what is hidden by purpose or by ignorance, that the story previously framed to tell on occasion, is a mere skeleton, and that his efforts must mainly be directed to the proof of it, if true, by the off-hand, unstudied addition of the many details that truth only can supply, or the refutation of it by the failure to invent details, if it is false. This is a test of the widest application in all investigations where the reliability of the narrator is in doubt, and, in fairly skilful hands, will always elicit the fact.

#### APPLICATION OF THE TEST.

23. Thus a woman living with her second husband, and having three children by him and one by the first, professed to have lost the first by drowning at sea. She knew the month in which he sailed on his last voyage, the name of a man who came and told her the vessel was lost and her husband drowned, and pointed to a directory of the following year in which she was set down as widow. And yet she did not know and never had known the name of the vessel in which he sailed, although she assumed to know she was a fisherman sailing from the town in which her husband always lived, and she with him up to the time of his sailing away; nor had she ever tried to learn the name of the owner. Asked why she had violated the rule of the church by going away from the city and parish in which she lived to another town, when remarried, she could give no answer.

24. So here was a skeleton with connective tissue

lacking, and it was not a matter of great surprise to learn that the first husband was still living at the place where she had left him ten years before. The more trivial these details asked, and the more numerous, the better, for the purposes of a test of truth.

25. But to return for a minute more to the peculiar difficulties in the investigations of the claims of colored people to settlement.

A woman living in old Ward 6 of Boston will say at first that her husband is "daid," and, when confronted with the fact that he is living at the South End with another woman, will justify herself by answering that he is dead to her, and has done "noff'n" for her for three years. Further investigation will show that she is not known by the name that she gives, where she lives, and that she went through a form of legal marriage with the man whose name she bears in the alley, about the time the real husband went away.

#### VALIDITY OF MARRIAGE.

26. It is not an unknown thing, where the right of support comes by marriage, for the town of alleged settlement to seek to avoid the responsibility by showing that the man living at the South End, though nominally the husband of this woman, is not really so, for the reason that he had a wife living when he married her. But it would be a rash and inexperienced investigation that should leave the case there, for a little patient work will find the woman who was this man's first wife, or, if she is dead, her sister or brother, and they will soon show that she had an undivorced husband living when she married him; that therefore his marriage to her had no effect, and there was no legal impediment to his transmitting an unimpaired settlement to the woman whom he has lately abandoned. But the visitor will always turn from a case

of this kind with a sigh of tender regret that the imperfection of marriage records and the death or absence of persons who could establish the whole truth leave him at last in doubt as to whether he has reached the last alternative in the seesaw problem.

GREAT CARE NECESSARY WHERE MARRIAGE IS AN ELEMENT.

27. Where there are wife and children in the case, the fact of marriage is always a vital point and one on which clear evidence is essential. For if there was a marriage ceremony which could not take effect, the status of the wife and children is not fixed by the first clause of the settlement law, as also if there has been no ceremony of marriage. But from what is said before it will be inferred that a proven ceremony by no means establishes the status.

28. It is always subject of investigation whether these two could contract and have contracted marriage, and there are some interesting cases enforcing this necessity for investigation.

CASE CITED.

29. Thus a girl twenty-two years old, settled by her mother in B., marries a New Hampshire man twenty-three years old, whose parents never lived in Massachusetts. It is not apparent how there could be a change in this case, until systematic questioning shows that three years ago the young woman married a man, now living, twenty-four years old, who has a settlement in C., that she never has been legally separated from him, and that she "married" her present husband without legal right to do so, leaving her settlement and that of an illegitimate child by the New Hampshire father still in C. by her husband.

## PRECEDENCE OF STATUTES.

30. Reading over the provisions of the statute of settlement, the student, remembering the proverb in Shakespeare, "When two are on horseback, one must needs ride behind," will ask,—where one clause provides that married women shall have their husband's settlement, and another that women living five years shall gain one of their own,—Which of these will take precedence where their provisions conflict? For instance, a woman having settlement by her husband in A., moves with him to B., where they live five years, he paying no tax. Then they receive aid. From the reading of the statute it is impossible to say to which of these places her aid would be charged, and it is only by the judicial construction of her condition of coverture during marriage that we arrive at the conclusion that her five years is not effective so long as she has a settlement by her husband.

31. And so of the clause relating to the ownership of real estate. There is no qualification in it by which one would doubt that a woman, old enough and living on it long enough, would gain a settlement in three years. But by judicial construction, *Spencer v. Leicester*, 140 Mass. 224, it is held that this clause does not apply to married women during coverture. The decision that fixed this principle was a surprise to overseers of the poor long conversant with the settlement law, especially when they remembered that at one time unsettled men were permitted to derive, by courtesy, some rights of settlement from the inherited settlement of the wife.

SEE THE FIRST SENTENCE, CLAUSE I, CHAPTER 83.

32. But the student can settle upon this principle, among seeming contradictions, that no other line of investigation begins until that of the husband and father is



ended. He will follow the husband from the time of his majority up (but, in the case of military settlement, will not consider his age at all), and, failing a settlement by the acts of the husband, will investigate his father during the father's majority. Now, if failing to prove anything by that, he turns to the applicant's mother, he goes right off the straight road. He must remember that we have set aside the right of the wife to gain, if the husband then has any settlement; and, before we can leave the road at this first turn, we must go on by the straight path to inquire whether this father had any by his father, and so back to May 1, 1860, or earlier, before we can found any claim upon the maternal side. This point is thus emphasized because it is here more than at any other point that the unwary inquirer slips. Of course, if the man has none, we turn at once to the woman; but it is fatal to do that too easily. Many illegal charges have been assumed by towns who have too readily said, "She and the children belong to us, if the husband has no settlement," and then have too easily settled down to that alternative.

#### CASE CITED.

33. A woman, belonging in a Massachusetts town by her father's military service, married a Maine man. Having learned that his immediate ancestors had never lived in this State, the town aiding the case felt safe in treating the case as settled only on the wife's side, and the man as a State charge. But an examination one generation further back than they had thought necessary to go brought out the important fact that the man's father, born in Maine, was the son of a widow, who, when she went to Maine in 1818, left a settlement by her husband in central Massachusetts. Under the facts as afterward learned the case went back to this old settlement, and the claim through the wife was not made the ground of any charge.

34. This case would now, under the legislation of 1898, be properly decided, "Man state case, wife settled."

35. The commission lately in session for the consideration of the various branches of insane, poor, and penal support, reported to the legislature a series of bills so far changing, not only the terms of responsibility for the support of the poor, but also in some respects the very foundations of the law, that at first view a consideration of the present and past laws of liability for expenses of poor relief would seem to have only an historical value.

SETTLEMENTS FOR THE LIVING, NOT FOR THE DEAD.—  
TAUNTON *v.* BOSTON.

36. But the decision of Judge Lord in *Taunton v. Boston*, 131 Mass. 18, so far modified the past and existing law of the State that for a long time to come, until it is reversed or qualified, provisions not now recognized as part of the active law will continue to modify and change the effect of the present provisions. So it will be well to carefully consider the history of *Taunton v. Boston* that we may apply its principles to the cases arising in the future, in so far as they come within its scope; for the repeated reference hereafter to be made to this important case will render a brief statement of the facts on which the decision was based very useful.

37. The question was whether a man dying without certain rights could become, by laws passed after his death, vested in those rights so as to convey them to a minor legitimate child who was still living. He had lived in D. from 1849 to 1865, was never naturalized, but had paid a poll tax every year. He moved to Z. in 1865, and died there in 1869, having lived less than five years there. During all the time of his living in these two places, and up to the time of his death, citizenship was a necessary condition of settlement; and the act repeal-

ing that condition was not passed until 1871, two years after his death. The case did not arise till 1879; and the question to be decided was whether this legitimate daughter was settled by her father's ten years and five taxes in D. or by her mother's five years without aid in Z. between 1872 and 1877, the family having been aided there in 1871, and lived without aid 1872-77.

38. The decision of the court was that, unless the statute was, in unmistakable terms, retroactive for the widows and minor children of men no longer living, as are all the military settlement laws, the status of the man and of those claiming by him was fixed by the status at the time of his death, and, as he was then unsettled, that the daughter gained no settlement by him. And it would appear to follow that, though an amendment were pending at the time of a man's death, which would give him a settlement, the mere fact that he died the day before it passed would leave his family as though he had done nothing toward acquiring a settlement, simply because he had so died.

39. Now suppose the case of one foreign born, moving to a town in 1858, living until 1872 in a place in Massachusetts, and paying poll taxes regularly. Then with his family he goes west; and he never comes back, disappearing from all knowledge of men in 1878. Twenty years after, his son comes back to the State, his mother, wife of the immigrant, having died in the west in 1873. When he falls into distress, the place where he was born is notified; and, if that town works the law as it is to-day, it will require to know, not only that this was his father who so lived and paid those taxes, not only that there was a valid marriage contract between his father and his mother, but also that his father had before removal lived the full ten years and paid five poll taxes in the place in which the settlement is claimed.

40. So much of a burden does the law of settlement in force before 1874, when joined with the terms of Judge Lord's decision, still entail upon us; and, if that part of the statute of 1898 which cuts off settlements gained before 1860 should not be modified so as to name a period as late as 1874, the same questions must arise for many years to come.

A LIVING MODE OF GAINING A SETTLEMENT NOT  
INCLUDED IN CHAPTER 83.

41. Then there was before 1874 a provision by which a person gained a settlement in five years by residence and assessment for property of \$200 in value during the same time, even when no tax was paid. When the codification took place in 1878, this method was omitted, probably because the five years residence, with the payment of three poll taxes, without ownership of property, was in 1874 made to give a settlement.

42. But the decision of Judge Lord gave the descendants of a man who died before 1878 as good a chance to prove their claim through his assessment for personal property as though that were still part of Chapter 83.

POSSIBLE EFFECT OF TAUNTON *v.* BOSTON ON MILITARY  
SETTLEMENT LAW.

43. The student cannot be counselled too earnestly to consider the reasoning and results of that decision, for its influence on present and future legislation is by no means yet at an end. A most interesting but not as yet directly mooted question in connection with it is its bearing on certain points in the successive provisions of the remarkably liberal and elastic military settlement law. It will be noticed, upon a comparison of the act of 1865 and 1868 with that of 1870, and of all these with the codification of

1878, that there has been a considerable change in the requirements at different times.

44. Thus in 1865 one could not gain unless he had been a resident of the town of his enlistment for six months before the enlistment, nor unless he had attained the age of twenty-one years. Under this rule persons applying for aid in 1866 were deemed to have no military settlement, if they had been hired to serve on the town quota, not then being a resident for the specified time before, or if they had not attained their majority when the service begun.

45. Then among the modifications of the act of 1868 came the omission of the previous residence requirement, with a retaining of the age clause, which also disappeared in 1870. The number of persons affected by these two clauses was very large, in that relating to age much larger than the muster-rolls indicate; for it was within the knowledge of every person conversant with the facts that many young men were accepted and put upon the roll as more than twenty-one who lacked two or three years of that age.

46. And in the latter part of 1863, when the town agents, in anticipation of the draft, were covering not only the loyal States, but even the whole of the South then under our control with their efforts to fill their quotas, it came about that many men served a year on the quotas of different towns who never had lived a day in Massachusetts.

47. It is not designed to discuss here the bearing of that decision on the settlement law for soldiers, as any remark upon that subject will more properly come under the consideration of the various clauses of that law, and it is only as an illustration of the possible effect of judicial interpretation upon legislation apparently dead that the topic is here introduced.



## THERE ARE NO TWO HISTORIES ALIKE.

48. The variety in human history and condition being so great, it may be of little use to attempt to show how a history of a case may best be made to-morrow by an illustration of how one was made yesterday. The returning traveller who sought to convey an idea of the magnificence of the Great Pyramid by showing a brick from the ruins had no more limited conception of his powers than has the writer who attempts to gather the million varying conditions which enter into the survey of this question within the bounds of a written formula.

49. "The short and simple annals of the poor" is a well-known and sounding rhyme, by a finical dilettante poet, more intent upon a musical line than on truth, and having no knowledge of the subject of which he wrote; for it may much more truly be said that the annals of the poor are neither short nor simple, but as extensive as the heredity of weakness and evil, and as complex as the mingled maze of temptation and environment and inheritance in which we all live.

## HISTORY OF A FAMILY.

50. Still, there are some points in which all investigations are alike; and, for the sake of them, and of some familiarity with the order of inquiry, the case of an ordinary American-born family will now be considered, as offering the most points for comment and instruction. The decision, as will be seen, is in the terms of the law before 1898.

51. A. B. was born in L. Mass. on Dec. 20 1856, and became of age Dec. 20 1877. He was then living with his father in B., owning no property, but paying a poll tax until Sept. 15 1882, when he went west, having paid a tax in B. from 1877 to 1882 inclusive, six taxes in all.

He remained west until December 1890, when he came to R. Mass. and lived until July 1897. He owned no property in R., but paid a poll tax 1893-4-5-6, not being assessed in 1891 and 1892.

52. January 1896 he was sick, and received aid from the overseers of the poor of R., who at first thought it was their case, as he had lived there five full years without aid and paid three taxes in those five years. Reading the statute of settlement, they could not see at first how he had not gained there; but happening to hear of *Taunton v. Wareham*, 153 Mass. 192, they learned that by judicial construction of the statute, it is necessary that the years of residence and taxation should be identical, and that there should be no moving from town and no aid in the municipal year in which the third tax is paid.

53. As there was no tax in the first two years, and as the 1896 tax was assessed and paid after the settlement was interrupted by the January 1896 aid, it followed that all three of the taxes, 1893 1894 and 1895, must count to give the necessary three; and as he was aided during the municipal year of 1895,—namely before May 1896,—it followed that he had paid only two that would count in his favor.

54. At first, being new in the business, they could find nothing in that statute implying that aid would prevent settlement in any place, but soon learned that this is a principle settled by uniform judicial construction for two centuries, and everywhere accepted as based upon sound principle, besides being affirmed in section 2 chapter 83.

Then deceived by the six tax bills in hand, and omitting to make a careful computation of age, they notified B. of five years' residence there with three taxes. But that town easily convinced them that his time with

them did not begin till Dec. 20 1877, when he became twenty-one, and that, as he went west in September 1882, he lacked three months of completing his five years after majority in B.

55. Then it became necessary to prove whether he had derived any settlement, as it was conclusively shown that he gained none in his own right. These overseers of R. did not reason that the wife clearly belonged there, even if he did not, because she had lived five years there without aid and was thirty years old, but followed straight back along the male line, seeking to set aside all those chances before coming back to the female side.

56. They found that his father was then sixty-six years old, was born in R. Mass., and had always lived in the State only when two years away in the war, when his name was not on either town or State quota. He had never owned any property nor held any town office by which a settlement might be gained. He was born in 1830; and up to the time of his marriage, in 1855, he lived with his parents in S. He lived in no place more than three years before June 1868, when he moved to B. where he lived until October 1883, when he moved to C. where he lived in 1896. He paid a poll tax every year in B., the only place where he lived five years before his final move to C. Had the son a settlement by his father? Clearly not in C., because the father did not move there till six years after the son was of age; and all the son's right to hold by the father ceased Dec. 20 1877. They did not forget that point,—that the subsequent changes of his father did not affect the son's status after the end of the boy's minority. So the next question was, Had the father a settlement in B. at that date? He had come to B. June 1868, and in December 1877, had lived there nine and a half years, paying only a poll tax each year. If it could be shown that either by father or mother he

had, during the present century, had a settlement in Massachusetts, he had not then gained a new one in B.; and the son could take none from him there. This will appear from the language of the settlement law of 1874, passed only three and a half years before this coming of age, which clearly sets forth the conditions of its application. Those who up to that time had been without a settlement might have the advantage of its retroactive clause, and enter upon one at once; while those who already had one must wait five years before changing to a new one. If this father had a settlement before 1868, he would not enter upon a new one until June 1878, six months after his son was of age. That is to say, the father was under the terms of the law existing before May 1874; and that old law prescribed ten years as the term of residence. If the father had moved to B. in November 1866, in place of June 1868, he would have completed his ten years while the son was a minor, and the settlement of the son would have been in B. in November 1876, as that of the father became, under the old law, in June 1878.

57. So there was no claim in B., either original or derived, if any earlier settlement could be shown, and the investigation went back to the father of the father. He was born in Massachusetts in 1804, and died in S. in 1866. He lived in four different towns in the State, and in three was a settled minister, which is one of the methods by which settlements are gained. But here, again, the investigation needed care and a comparison of dates; for what the minister did after his son was of age had no effect on the son, and of course could give no rights to the grandson. The son was born in September 1830, and came of age September 1851. His father was settled in A. from 1832 to 1836, in T. from 1837 to 1840, gaining successive settlements in those towns; out of the

State 1840-41; preaching but not settled in M., 1841-43; and in S. from 1844 to 1866, in which latter year he died, settled as a minister and as a citizen. So, as the son did not come of age till 1851, it was easy to fix the claim in S.

58. Now, before going on further with some other particulars of this case,—which, having found the responsible place, are matters of convenience and detail,—it will be helpful to consider next the changes of some of the younger members of the B. family, as illustrating the workings of the law. The son who was aided in R. had a brother and three sisters; and each of these followed a different course, in regard to legal responsibility in case of aid, from his own. One sister, two years younger than he, born 1858, was not of age when her father completed his claim in B.; and she was settled there until her marriage, in 1882, gave her a new claim, under the first clause of derivative settlements by her husband, in another place. A sister two years younger than she, coming of age in 1881, had for a time her father's claim in B., but soon after lived five years in W., and gained a new one for herself under the clause applying to women more than twenty-one years old. A brother, born in 1862, kept his father's claim, while he himself wandered from place to place, never living more than two years in any, between 1883 and 1891, when he settled in B., and completed his five years there in May 1896. If he had fallen into distress at any time before this, he would have fallen back upon the settlement of 1868-78. Finally, a daughter born in 1866 had, at her birth, her father's claim, through his father, as, of course, all the others had also had at birth, then derived one from her father in B.; and, finally, by marriage, derived one from her husband in W.



## EFFECT OF STATUTE OF 1898.

59. Now, while the dates of birth and majority of the eldest son in the B. family are fresh in mind, let us briefly consider what change, if any, is made in the case by the statute of 1898 section 1. Is he one whose derivative settlement, May 1 1860, "prevented a subsequent acquisition in the same place," and therefore one whose settlement continues? or is he one whose claim is lost, as not having been renewed by acts done after May 1 1860? There is nothing in the act of 1898 that changes the legal effect of any act done by the father of the applicant, and we must go back again to the status of the grandfather.

He was living in the same place in May 1860, in which he had gained a settlement as a settled minister before that time; and as he continued to live there more than five years after May 1860, under conditions that would have gained a settlement there only for the fact that he already had one, the conclusion is that the 1898 law does not defeat the settlement in this case.

## QUESTIONS OF DOMICIL.

60. But it may be that our investigation is not so easy as the tracing of the B. family would imply, and that more careful looking at the history of the applicant is necessary. As stated above, it is impossible to predict in what phase of the case the necessity for care and scrutiny will occur; but there are few cases in which it does not arise in some form. Did a marriage take place? Could both the parties legally contract marriage? Did they live five years in A., or only four and three-quarters? When they lived in A. three years, then moved to B. for six months, and back to A. for three years more, was there a change of domicil or only a temporary absence with pur-

pose to return? When they owned a house three years, did they also live in it the whole of the same three? These and many other considerations will be in the mind of the visitor while he completes the details of the application. He should always get the age, birthplace, and name in full, because the applicant may give his name as Harry or Frank; and then the visitor will not know whether the H. Harrison or Benjamin F. that he finds in the directory is he or not. When a man says his name is Chase Delano, and one finds a George C. Delano living where he claims residence, it raises a very strong probability that this is the man, but does not establish the desired certainty. It is very desirable, also, to learn the full name, not only of the applicant, but of all others connected with the case, and to establish carefully the dates of all the events recorded on the paper. Where there is a question of time of residence to be settled, the births and deaths of all children, dead as well as living, will be useful; and these particulars will suggest dates and places of living that would otherwise be established with difficulty or not learned at all.

IF POSSIBLE, COMPLETE THE HISTORY AT THE FIRST VISIT.

61. It cannot be too earnestly enjoined to make the first investigation conclusive, if that is possible; for while the worthy poor like those who are to undergo a surgical operation, nerve themselves up to it and bear the questioning, however close, with patience and fortitude, if only it bids fair to end some time, yet the cases are not rare when a repetition of the visit for further investigation is very impatiently received, and the applicant is apt to think, even if the visitor is not told, that the trouble is out of all proportion to the benefit. Especially in more painful personally uncomfortable details is this the case; and the visitor who has once brought his ap-

plicant to be confidential with him must not be surprised to find, when he fails to take full advantage of the concession, that it is impossible again to secure it.

GENERAL REMARK ON THE MILITARY SETTLEMENT  
LAW.

62. With a brief examination of the considerations connected with military settlements the general survey of these investigations will conclude; and it is well that these most intricate and difficult inquiries should last engage our attention, and make a permanent impression. For we are to remember that the military claim is in some sense a debt due from the State to those who came to her defence when she stood in sore need; and, while we use our best efforts to secure the benefits of the statutes to those who come within their provisions, we are never to forget that, when the purpose and meaning of the acts are so extended and warped as to include in their limits men for whom they never were intended, we not only wrong the State, but we also degrade and insult the honorable company of true soldiers by forcing into their association the unworthy.

63. Although the consideration of the various and sometimes conflicting provisions of the military law will more properly come under the general review of the statutes to be made later, it will here be of service to consider briefly the history of the law and the more common applications of its provisions.

CONDITIONS UNDER WHICH MILITARY SETTLEMENTS WERE  
GAINED.

64. All the conditions under which settlements were acquired by military service contrasted strongly with those by which civil settlements are gained.

The hurry and disorder attendant upon the great con-

vulsion of 1861 left small leisure or opportunity for careful records; and even where the purpose to defraud, for which the confusion gave too much chance, did not manifest itself, there was ample scope for dispute afterward by reason of incomplete or erroneous record. While in civil settlements the process of acquisition was slow and hedged in by ample provision of known law, here the settlement might be acquired in a day, or under cover of thick night when no witness survived to give evidence. While under civic law all the conditions were matter of record or of fact not too difficult to be verified, here the very central proof might be hidden in the confusion and agony incident to a great battle. And, finally, while the statutes of civil settlement had been substantially in operation since the beginning of the century, and had always been prospective in their effect, these laws were put in operation *ex post facto*, and were made to apply to the dependents of men who had been dead years before they were enacted.

#### CITIZENSHIP NO LONGER ESSENTIAL.

65. It is interesting to note that, as the circumstances of the time of the first military settlement law were, in a broad sense, revolutionary, so was the legislation without parallel, one evidence of this being found in the fact that the privilege of settlement, heretofore jealously kept for native or naturalized citizens, is here conceded upon the basis of honorable military service. And, while the earlier statutes of military settlement did impose some disabilities of residence and age, the ultimate result, not long delayed, was that any person who had been willing to bear a musket for a year in the service of the republic, and had so conducted himself as to secure an honorable discharge at the end of that time, secured by that

act a permanent claim upon the municipality on whose quota he was counted, even though he never had lived a minute in the State and could not speak or write a word of the English language. A wider departure still, perhaps, from the spirit of the old settlement law was found in the fact that the widows and orphans of men long dead were, by the retroactive force of the law, allowed to derive from his services privileges that had not belonged to the soldier in life.

THESE JUST STATUTES NARROWLY CONSTRUED BY THE  
TOWNS.

66. In the application of these various provisions to existing cases, as well as to those under the old settlement law before the Civil War, it is fair to say that the native thrift and shrewdness of the race were apparent in the acts of the officers of the different municipalities; and there was a general purpose, in all cases, to be sure that the case in hand came fairly within the statute provision, and even that the statute had heretofore been properly construed. For it is only recognizing a well-understood trait in human nature to admit that the sense of obligation and indebtedness for service long past is one that is hard to renew and keep bright year after year, especially if its beneficiary is repulsive or vicious.

This fact is the true spring of the vast number of judicial decisions in the last thirty years; and it has been fortunate for the State, as well as for the true soldier, that all of these rulings have borne the impress of the knowledge of military usage acquired by actual service in the field on the part of some occupant of the bench. It is much to be regretted that the wisdom and scope of knowledge which characterized the late Judge Devens can



no longer be invoked in the settlement of difficult points not yet foreseen, and especially of a question which must at some time arise as to the effect of a late federal law, to which continued allusion will be made under the head of "honorable discharge," as that legislation involves the question of the paramount authority of State and national legislation.

#### IMPERFECT RECORDS HAVE MADE MUCH TROUBLE.

67. No small part of the litigation of military settlements became inevitable by reason of the imperfect manner in which the records of quotas were made. We must not forget that fully one-half of our soldiers and more than two-thirds of our sailors never enlisted on any quota, but were placed to the credit of some municipality by the action of an enrolment board. Until 1863, when the volunteering energy had exhausted itself, there was no thought of relative obligations of towns in the furnishing of men; and it was not till the draft cast its possible shadow across the State that the towns began to count the names of those who could be credited to them in that emergency.

#### ASSIGNMENT OF MEN ON QUOTAS, AND THE BOUNTY SYSTEM.

68. With the draft came the rapid increase of rates of bounty, which now changed its character from a goodwill present to a direct purchase-money, which grew with the price demanded in each successive month, sometimes in an inverse ratio to the personal value of the men who received it. With men whose monthly wage had never been above \$35 the opportunity to secure \$1,200 or \$1,800 at a stroke brought about a system of bounty

jumping and desertion, generally under assumed names, that greatly increased the difficulty of determining, in after years, the relative obligations of towns and the identity of enlisted men. At one time, when the draft system was in full force, the officers of a receiving-ship at Brooklyn conspired with the worthless men who were brought in through its operation; and, under the iniquitous plan devised, a man shipped on one day slipped out of the ship and yard the same night under the conveniently closed eye of the officer, and appeared the next morning under a new name, and with \$1,000 in his possession. Other villains of the same kind remained on board the receiving-ship for a week, and still with the connivance of officers spent the nights in robbing their shipmates of the money received. It was estimated at one time that fully one-third of the Army of the Potomac were absent and unaccounted for; and no inconsiderable portion of these persons, who had overstayed furloughs or sick-leaves or had deserted outright, reappeared under assumed names and with a heavy bounty.

#### EXCEPTIONS TO THE BENEFITS OF THE LAW.

69. It was to provide for such cases as these that the settlement law divided the men who had served into two classes, the worthy and the unworthy, and provided that none of the latter should share its benefits.

#### IMPERFECT RECORDS.

70. But it was not only in cases of fraud that difficulties arose in the application of the settlement law. Many cases occurred in which young men enlisted under assumed names for the purpose of eluding the objections of their friends; and in all these, especially where the

soldier lost his life, the necessary proof of identity was difficult, sometimes impossible to secure. The incapacity of the officers whose duty it had been to make the records of the men, increased, in many cases, the confusion; and in one instance a clergyman of the highest worth, who out of his natural modesty and simplicity shouldered his musket as a private and marched to his death at Chancellorsville, by some unhappy chance got returned as a deserter, and still so appears on the printed official record.

The same imperfection of record made it possible for a man who was left behind at Alexandria when his regiment sailed for New Orleans, who was forwarded to his regiment and thereafter served three years, with honorable discharge, to be finally mustered out with the original record uncorrected; and that, too, stands against his name to this day.

#### CONCLUSION — THE WORK OF THE VISITOR.

71. The various amendments that the law of military settlement has undergone in the matter of discharges for disability will be more properly considered under the technical comment on the statute; and this general introduction will here close with some remarks upon the value and dignity of the work of the professional paid visitor among the poor, and an historical survey of the changes in the field of public relief in Boston and the State in the last thirty years. This seems the more proper and necessary because the great extension of interest in the welfare of our dependent population, among the prosperous and well-to-do, has begotten in some circles the thought that the unpaid voluntary work of the amateur must have a higher value than that of the regu-

lar visitor, because done with more heart and sympathy, and without any suggestion of the perfunctory official routine of the paid visitor. This assumption, that the fact of continuous occupation with that of compensation for the service rendered raises a presumption against the quality of the work done, is a most curious perversion of reasoning, so entirely without a parallel in any other human occupation that one can only wonder how it came into existence. In what other business is experience considered a drawback? Where shall we find, in any other sphere of occupation, a thing more highly valued because it costs nothing and is held by its producer at no higher rate? Far older and wiser than this modern theory is the axiom that the laborer is worthy of his hire; and it will not be until we discard surgeons because they have grown hard-hearted in their long familiarity with suffering that we shall come to believe that the heart of the visitor grows more callous to the tale of sorrow by its often repetition. In truth, the only real ally of these advocates of amateur visiting, as conflicting with proper efficient official visiting, is the fraudulent impostor; and he is the natural enemy, not only of the careful visitor, voluntary or official, but of the human race.

72. As usual, the truth seems to lie between the extremes of statement; and, while it is not true that a purpose to do good and a willingness to sacrifice the personal convenience of the visitor to the good of the poor will in any degree prevent the mischief that unwise counsel will surely do, it is true that the fact that a person is paid for it, does not make poor service good.

The spirit and purpose and capacity which the visitor brings to his work will determine the measure of his success, and the pecuniary conditions under which the work

is done will be seen to have much less to do with its quality than has been believed by some persons who have assumed that official work is necessarily lacking in heart and earnestness.

73. Ten years from this time, when the visitors and officers of these voluntary societies who have been in the work for that length of time are confronted with the proposition of some enthusiastic recruit that their knowledge and experience have so far compromised their usefulness that they are unfitted for farther service, they will see a fallacy in the reasoning, perhaps before unsuspected. If, among the well-to-do, the isolation that comes with advancing years by the death of friends makes a calamity of the loss, how much greater is that the fact among the worthy poor! How much this misery is alleviated by the sympathy of the friendly visitor, let the free answer of all visitors in every town decide; and there is no risk in assuming that they will speak with one voice. When resignation or death or change of field brings a new face to the house of the poor, the fact is sure to be noticed, and some remark to be dropped that testifies to the fact that the official relation has become a personal one also, which the patient is sorry to see ended. All the possible advantages come to the permanent visitor; for each visit begins where the last left off, and his usefulness increases with his knowledge. All of this, not because he is paid, but because he is permanent, and always in his field of labor. To many of his clients he is, and always must be,

“Father and mother both, and children, all in one.”

74. Meanwhile, if the faithful visitor, paid or voluntary, wisely labors to strengthen the feeble purpose of



his charges, to give them patience in their unavoidable sorrows, to fan into active life some lingering spark of self-respect or pride or desire for better things, if he is kind even to the unthankful and the evil, if he is compassionate to weakness and sorrow, he may justly claim a humble share in that work and plan that shall at last wipe away all tears from the eyes.

#### THE FIELD OF LABOR IN THE LAST THIRTY YEARS.

75. Since 1865 the population of Massachusetts has more than doubled, going, in round numbers, from 1,200,000 to 2,500,000 by the 1895 census; while by the same authority Boston has increased nearly threefold, going from 192,000 in 1865 to 496,000 in 1895. While this increase is due, to a large extent, to immigration and internal growth, its great cause is to be found in the annexation of suburban places.

#### ANNEXATIONS TO BOSTON.

In 1866, save for the annexation of Dorchester Heights in South Boston early in the century, the territorial lines of Boston remained as they had been from the beginning, changing their curves only as the levelling of some hill pushed the building line over marsh or toward the sea. But in 1868 Roxbury with 30,000, in 1869 Dorchester with 11,000, and in 1874 Brighton with 5,000, West Roxbury with 9,000, and Charlestown with 30,000 became parts of Boston, and added nearly 100,000 to its population.

These places all brought to Boston their quotas of poor persons; and, while the less exact methods of the boards of relieving officers in the different places sometimes allowed larger amounts of aid than have been given

since annexation, it is not true that annexation has increased the aggregate burden of poor relief. Rather is it true that in any given ten or one hundred families considered, the per cent. of persons applying in most of the annexed territory will be less than in the city proper. When the conditions in which the poor of Boston lived before 1872 are considered and compared with the present fact, a great change for the better is seen. Philanthropy has had its full share in bringing about this change; but business necessity and the inexorable demands of trade have done more than all other influences to destroy the abodes in which the poor were herded in the Cove District, before the great fire.

#### THE COVE DISTRICT.

There were tenements in narrow Utica or Tufts Street where the sun's light never entered, where the visitor groped his way up filthy stairways, breathing at every step the odors from defective water-closets or from the grosser forms of personal filth that such living makes easy, to the low-ceilinged rooms above where, with absolute absence of ventilation, the miserable consumptive breathed out his last; and in North Margin Street and in Institute Avenue one could find many no better.

#### THE NORTH END.

On a winter day in 1872 a visitor saw a poor widow on the water side of North Street. Her tenement consisted of two rooms in the basement, reached by a short, unpaved incline from the street. In front of the door was a plank on edge, half a foot higher than the ground in the passageway and a foot higher than the door-sill. This kept the water from flowing, with every shower,

into the basement. The cellar into which the door led was without floor or furniture of any kind; and the partition between that and the apartment partly under the sidewalk, had merely a step to it and an aperture through it, but no door. The floor of this inner apartment was raised from the ground a foot or more, and on a mattress on it lay the sick woman with her two children. There was no fire in the room, nor did the furnishings include a water-closet; and the condition of the air, by reason of the disease of the bowels from which the poor woman was suffering, was indescribable.

#### ENLIGHTENED.

Such a condition in Boston is now as certainly a thing of the past as is the long truck with four horses tandem or the hand fire-engine, and the larger corps of visitors sent out by the overseers of the poor in Boston now have to meet few or no cases so miserable as this. No one organization or force can claim all the credit for the change, for it is the result of different though often co-operating agencies. The visitors of the overseers, when they find persons temporarily thus cast away, themselves continually advise and bring about removal to better places of abode as a condition of aid.

The police, under continual official pressure, act as inspecting officers, reporting at the office of the overseers the bad cases of which they learn; while the Board of Health, with courageous energy, confronts the thoughtlessness of mercenary landlords and middlemen with decrees that can be neither transgressed nor ignored; and private societies and individuals, under no stimulus other than that supplied by kind hearts and unselfish devotion, gauge and peek in every alley and dark corner, and bring

the accidents and the emergencies of poverty to the attention of those who will investigate and do the needful thing in the best manner.

PRIVATE CHARITABLE SOCIETIES.

76. Under this name are included all the hundreds of organizations that provide for the alleviation of every possible form of human suffering and want, in and around Boston. To enumerate them and to set forth, even in the briefest way, the aim and work of each would require more space than is used in all this book; and the reader is referred to the excellent Directory of Charities for further information. Here only those whose work and location bring them into official co-operation with legal relief will be mentioned, though there are few or none which are not at some time in helpful relations with it.

The Provident Association, the Howard Benevolent, and the Young Men's Benevolent, among the older organizations, can better meet off-hand many of the sudden emergencies of poverty and accident; while, among the societies newer either in co-operation or origin, the Saint Vincent de Paul in the city proper and in all the suburban councils, the Employment Bureau, and the Hebrew Benevolent care for many cases and tide them over emergencies, so that they never appear upon the public relief records.

Besides these, nearly all the annexations have brought the resources of the local charities of each place within the scope of the consolidated city; and, though these are generally available only within the limits of the original town, they are none the less useful.

## ASSOCIATED CHARITIES.

77. Nor would any account, however superficial, that makes pretence to a review of the present system of charity and the changes that have occurred in the last thirty years, have any just claim to being satisfactory which omitted to speak of the Associated Charities, that latest growth of philanthropic purpose, which covers all the territory of all the cities and larger towns in the State, and proposes to itself no less a task than to make itself a federation of all the charities in each,

“Distinct like the billows and one as the sea.”

In its ranks throughout the State will be found a full proportion of those who are willing to give time and personal strength for the welfare of those less fortunate than themselves.

Probably those who devised this plan did not expect full success in it; for they knew enough of human nature to show them that the different aims, theories, and bases of action of the different organizations who were to be represented at its council board would forbid that unity of sentiment and purpose that is essential to co-operation. Thus, if one believes that public aid is too large and too free, and another that more should be given, and with less scrutiny, it is hard to see how one can consent to be directed or superseded by the other.

But there is one department of usefulness in the work of this society to which every relief organization owes a debt that should be freely acknowledged,—namely, in its statements to each of what other societies or persons are doing for a given case; and it is no more than mere justice to say that much of the mischief of uninvestigating private almsgiving has come to an end through its means.



78. If another development of the activity of this society — namely, its volunteer visiting scheme — cannot be commented upon with unqualified commendation, that fact may readily be accounted for by assuming some professional bias or prejudice of which the writer is unconscious; and thus the criticism will fall to the ground and harm no one. But there are some principles of human action and influence that admit no limitations or excuse, and these break over all conveniences and conventionalities as the springtide covers the Lynn marsh. If the conditions of this plan are such as oppose the experience and practice of two hundred years, of officials neither hard-hearted nor stupid, it must be that there is still something to be said for the ancient usage.

79. The fact that one has will and time to perform daily and continued free visiting duty among the poor implies in all but the smallest proportion of visitors that it is a coming down,—a temporary tour in a lower walk in society. That is not truer of him, however, than of the paid official or of the dispensary doctor; but the advantage that they have is that their field covers a hundred cases, while his, by the terms of his service, is confined to three or five families. They have the essential help of comparison, of gauging the similar or differing conditions of many, and so of arriving at an average; while he, unless his field of duty is often changed, must make absolute, and not comparative, judgments. While that defect is not so serious in its practical effects as it would be if the visitor were also an almoner, and not an adviser, it is not without its drawbacks with him.

It does not follow, because a visitor habitually lives in conditions much better than those of the unfortunate persons whom he sees, that he is to carry down into their



cheerless homes the measuring wand of his own daily living, and to attempt to adjust the conditions of these to the consideration of how much himself would suffer if deprived as these are. But the experience of some relief officers near, but not in Boston, has been, in years past, that the advent of the volunteer visitor was followed by the flocking to the relief officers of recruits who learned for the first time of their visitors how wretched their condition was and how much they stood in need of immediate relief.

#### VISITING BY PAID AGENTS.

80. It would not appear that the plan of paid visitors among the poor, other than the overseers themselves or agents, had yet greatly approved itself to the local authorities of the cities and towns; for it is believed that less than ten places in all the State employ one. Indeed, the practice, as seen by a visitor from place to place, displays all the successive methods through which the different municipalities have passed; and a considerable proportion of the places will be found to come under one of four classes. The first division, into which most of the smaller towns still fall, elects overseers of the poor; but no one of the board systematically visits the poor in their own homes. Those in the almshouse are much better known about. No one is in charge of, or sufficiently well versed in settlement matters to be responsible that the law is correctly worked, and everything is in disorder so far as this department of duty goes.

In the next division come most of the larger towns. These generally make the selectmen also overseers of the poor; and one of their number is by the rest of the board assigned to the care of this department, as another may be to the special oversight of some other division.

This plan has its advantages over the other, in that it is the duty of some one man to know about things; and, if one needing to do business with the town can find the right man, he will probably find the work reasonably well done. Still, in a large majority of cases in this class the visitor sees that the member going with him to visit goes for the first time, and knows that the interests of his own municipality are not half so well safeguarded there, as are those of the visited place in his own city. Neither this class nor the other have generally any headquarters except, perhaps, for a single day or evening in the month, the relieving office being the home or place of business of the overseer in charge.

The third class, including all the cities that do not fall in the fourth, maintain relief officers with the title of clerk or almoner or secretary, and generally provide for open doors in business hours. The singular fact about some members of this class is that, passing through the experience of number two and learning the advantage of making some one man responsible for the relief given, they do, nevertheless, after choosing an executive officer, keep his relieving duties to themselves, and aid the poor in their own wards, as though they had no almoner. Thence it comes about that all the cases that require prompt action toward the State or toward other towns, in order to save the rights of his own city, are left to the memory of a business man, who already has too much to think of; and thus much loss of money and of responsibility ensues. Add to this the fact that when Mr. G. is aiding the father and two sons in Ward 3, because the mother has gone off with the girls, Mr. N. is aiding the mother and girls in Ward 2, because the father has deserted the family. This is carrying the Scripture in-

junction a step too far,—when the right hand not only does not know what the left hand is doing, but not clearly what it is doing itself. The convergence of the X-rays of evidence in one relief office saves all such disgraceful errors as this.

The last class, in which the visiting agent (except in cases of emergency, which are always provided for in advance), reports to a responsible executive, would seem to have many advantages over either of the others. The ideal plan, perhaps, would be that the executive, whether under the name of secretary, agent, or almoner, should also be the visitor; for it is quite impossible to sum up all the essential evidence that a visitor gets in half an hour's investigation in ten lines of written or five minutes of verbal report, and thus much that is of vital importance in the management of a case is lost. Still more is this the fact when the responsibility is transmitted through the executive to the supreme board, who pass judgment on two hundred cases in an hour. While in the greater part of the cities in this class it would not be possible to secure the great advantage of this combination of visitor and almoner, for the reason that the lapse of time in clerical duty, and in listening to the talk of applicants and their friends to whom time has no value, would leave no margin for visiting by a secretary, there seems to be no reason why it might not be universally applied by class three, with the result of a great increase of efficiency. The supreme board, that convenient blind behind which uncomfortable responsibility is mitigated or lost, will still go on with the coach; but the decision of a given case must in the last resort depend upon the result of a visit, and the more fully the grounds of that opinion are represented in the conclusion, the better for all affected.

It was the remark of a wise and kind almoner of private charity in Boston, more than half a century ago, that he could break the desire for self-support and independence of the best family on his list by giving it a half-cord of wood at the wrong time; and the observation is worthy of long remembrance by the conscientious visitor. He knows, as no one else can know, how the aid, at first received with tears and protests, soon comes to be reckoned as a part of the permanent income, and sees evasion, misstatement, and downright deception laying waste the future of his client. His noblest, if hardest and most thankless work, will be in process of accomplishment when he is dragging his protesting dependent from the place where he now seems content to lie, and to lie forever, back to the firm land. When a son by selling papers after school, or a daughter as cash-girl, earns no more than half what the weekly aid has been, he will insist on making the fact of earning plain in some decrease in allowance; and when, the evil spirit of dependence on the public having at last gone forth, the patient sits clothed and in his right mind, if it is not in human nature for him to thank his visitor, the latter may be sure of an approval that is worth more than the voice of all the world besides. When the poor person has taken the first step, and has seen that no trouble has followed, the battle is more than half won; for it is generally an honest fear with which the visitor contends, and the recipient of aid cannot see, with the children one year older and eating more, how this small earning can warrant any reduction.

“The destruction of the poor is his poverty,” for he daily pays more for and gets less of what he buys; but the conditions of his mind also tend to destroy him. If



he could see, as his faithful visitor can see, how each slight improvement in his condition may bring him back to independence, he would need no help; but to him the week in which aid can be decreased is always the next week, and never this week.

#### CASE CITED.

81. In one of the larger cities there was living, thirty years ago, a widow of good character and family, with two sons. The older, eighteen years old, was in a scientific school, and the younger, fifteen years old, also at school. The mother earned what she could at a time when there were fewer paying places for ladies than now, and was glad to learn, at last, of a sum of money held by trustees, from which she could receive a yearly allowance. She received this money and used it prudently for five years, in which she was living in some place near, but so inaccessible that in all the time she was not seen in her home. Then a point was made of looking her up and finding out the changes, if any, in her condition. The house in which she lived was seen, on visiting, to have her name on the door-post, and in the town in which it stood was worth \$4,000. She answered all questions frankly and squarely, and there was no desire to mislead or conceal.

The visitor relates the conversation thus: "I see your family name on the door-plate. To whom does the house belong?" "To my son." "Does he own it clear?" "Yes." "What is his business?" "He is a civil engineer." "About what does he earn?" "I do not know exactly now. A year ago it was \$1,800 a year." "What family has he?" "A wife and one child and myself." "Where is your younger son?"

“Away, a clerk, caring for himself.” “Mrs. —, do you suppose you would have to go without anything you now have if you did not get that money next year?” “Oh, no, I presume not.” “Now, if there is some other widow without a son, who needs that, don’t you think you would be somewhat standing in her way if you continued to receive it?” “Well, I might feel so under some circumstances; but now I give away every year nearly as much as all that amounts to.”

From what the visitor related of this lady’s antecedents and character, it was clear that here there was more blame in the failure to follow the case up in past years than in the person aided.

#### ANOTHER CASE.

82. Another case illustrates another phase of experience. A woman with a large family lost her husband by sudden death, and a lady who heard of the case went round among her friends and raised \$100 for the poor family. She carried \$65 down immediately, that being all she had then collected, and was overwhelmed with thanks and truthful assurances of how much the money was needed, with winter coming on and no outlook. When the rest of the money was in hand, the lady, wishing to spare the reflections of the poor widow on the difference in their positions, left her carriage at home, and went down in a horse-car. The house was locked; and, as she stood looking up and down the street, she saw a hack approaching from the country. It drove up to the door; and when the woman got out and paid the driver \$5 she turned to the lady with the remark that, as there was no school, she thought she would give the children a hack ride. The same ride could have been taken in the horse-

cars for a tenth of what was paid, and the lady was very indignant; but really she was more to blame than the woman, who suddenly found herself in possession of more money than perhaps she ever had at once in all her life before.

These cases enforce the moral, by pertinent example, that there is no royal road to doing good by giving of alms. Though in neither case was the giving of public aid by paid visitors, both teach the same lesson,—that it is not only necessary to mean well, but also to do wisely. It is one of the uncomfortable lessons that we learn in life, sometimes too late to be of any help to any one, that ignorance of the law does not excuse us in court or in the world, and that in both we are presumed to intend to do what is done, and are rewarded or punished according to the act, and not according to the intention.

#### EFFECT OF GREAT FIRE.

83. The 1872 fire, coming as it did at the beginning of winter, caused much hardship among the poor who were unhoused by it; but there is no doubt that in the end they were great gainers, for the reason that the tenements that were occupied by them, after the first emergency, were in all respects much better than those burned. Here the rules of the Building Commission came in with telling effect; and, while it was not often the good fortune of the poor to have for their benefit combined the just owner and the wise philanthropist, as in the case of Mrs. Alice N. Lincoln, the joining of many active forces clearly did give them, in the end, much better houses than they had lost.

In one respect, if in no more, the change was wholly beneficial; namely, that it broke up, for a time, that

aggregation, that solidarity, which is such an absolute bar to improvement. For whether it be a general attacking an enemy, a doctor coping with camp fever in a besieged city, a health officer working in a small-pox epidemic, or an alienist seeking to bring back his patients to health and sanity, the problem is always the same in its initial steps; namely, to separate the combination into parts, so that they shall not support and re-enforce each other. When sunlight and air and civilization surround these fragments and wrecks of the perfect man, attacking them from all sides with their invisible potent effects, the problem is already more than half solved.

#### CHANGES IN NATIONALITY.

84. In the cities and towns around the ports of entry of Massachusetts the books of the relieving officers would show, on inspection, a great change in the relative proportion of representatives of different races aided in the last twenty years, some having appeared in the last ten or fifteen years, in large numbers, who were practically the first comers. This is peculiarly the fact in the Russian and Polish Jew immigration, and now in Boston one travels through whole streets in which the signs on the stores and the conversations in the doorways assure him that he is in a foreign land. In the Cove District, where one of the colonies may be found, one may have to go three or four houses away before an interpreter is found; and in all the flights, from basement to top, each harboring its separate family, there will no person be found whose dress, speech, and manner will not stamp him or her at once as a new-comer. The very large families that fill these rooms — with the disproportion of small children, from the American standpoint — will un-

doubtedly make them likely subjects for poor relief for some years to come; but, considering the vast numbers of them, the per cent. of those receiving public relief at this time is not large. It is a curious fact, but not difficult of explanation, that the Japanese and Chinese contribute no subjects to the pauper ranks of Massachusetts. Here and there one of the latter race, dying suddenly with suspicion of suicide, may be abandoned by his friends and left for public burial; but in life these two peoples, coming here from homes where dire poverty and overcrowding send men out with nothing to begin the world with, fall on their feet, and remain there. If other immigrants, like them, came only in middle life, with good health and without children, the same fact might be true of them also.

The different sections of Boston, curiously enough, keep their colonies of different nationalities reasonably distinct; and one may hear a good succession of Italian dialects on Prince Street in the North End, and then go to Western Island Portuguese by travelling only across Hanover Street to Fleet Street or Hanover Avenue.

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THE CLAUSES OF THE SETTLEMENT LAWS CONSIDERED  
SEPARATELY.

85. Only the clauses of the law relating to settlement and the relief of poor persons are here quoted; and the comments upon them will be found to relate principally to the status of persons aided in their homes, as it is only with such cases that the author is sufficiently familiar to make his suggestions of any value. But the law



governing these cases, except in a few details, is also that governing the indoor poor; and there have been few decisions not applicable to both. As a rule, the decisions made before 1874 are not cited, as there were few involving new departures before that date, except in military settlement, in which department litigation has been steady and interesting.

86. "Chapter 83, Section 1. Legal settlements may be acquired in any city or town so as to oblige such place to relieve and support the persons acquiring the same, in case they are poor and stand in need of relief, in the manner following, and not otherwise; namely."

"IN NEED OF RELIEF."

It is under this provision, in connection with section 14, chapter 84, that the right of a person to receive relief in the town of settlement or any other than that in which he is settled is made clear, and the obligation of the place of settlement is asserted; but the right is contingent upon the fact that the applicant is "poor and stands in need of relief" (by 117 Mass. 445, in *New Bedford v. Hingham*, made more specific, "standing in need of immediate relief"), and it is noticeable that the statute does not leave anything to the discretion of the relieving overseer of the poor, but, while it makes the duty of relief absolute, in a condition stated, it makes the necessity for it a matter of fact, and not of discretion or judgment by the almoner. That is to say, it is always open for the town of settlement to inquire whether the aid given by the relieving town was necessary, whether the case stood "in need of immediate relief"; and, if it did not so stand, the relieving town cannot recover. *New Bedford v. Hingham*, 117 Mass. 445. See also *Temple-*

*ton v. Winchendon*, 133 Mass. 109. This is one of the conditions which must be proven before the necessity arises; and where the town of settlement is by statute estopped from denying that the settlement is there, by failure to send such written denial in due time, it is not estopped from denying that there was a necessity for aid. This is one of the conditions which must be proven; and the court, in the first case cited, says that all the conditions necessary to create the liability must concur and must be proven, or the liability does not arise. When it is remembered that under former decisions a town was held, on account of failure to deny, to pay the expenses of a person having no settlement in the State (*Westminster v. Bernardston*, 8 Mass. 104), it will be seen how highly the courts have valued this right to contest the necessity for aid.

The giving of unnecessary or excessive aid, whether by carelessness caused by irresponsibility for charges made to another town, or to "get even" for some former sharp practice on the part of the notified town, has been carefully provided against in a clause to be later considered; and the courts have uniformly held towns strictly to the statute requirements in all the conditions necessary to establish pecuniary liability. In 22 Pickering, 385, it is said that "all the conditions must concur before the liability arises"; and the burden is on the relieving town to show that they do concur. That the family does live in the notifying town or is legally aided by it (as in some hospital) in another; that it needs the aid; that the father and mother are legally married, if that question is involved; that the last legal settlement is in the defendant town; that they are the persons claiming the rights asserted; and that the claims made are for

expenses legally contracted,—all these are subjects upon which proof is required, of which the burden is on the claimant.

The decisions of the Supreme Court repeat over and over the necessity of adhering closely to the letter of the statute in these cases, and of excluding all considerations of equity. If one pays in one year double the amount of money which would have been required of him if distributed over five years, and pays no more during the residence of five years, he will have no settlement, even if able to pay as much all the time, because he has not fulfilled the arbitrary requirements of the law.

#### RESPONSIBILITY OF TOWNS TO OWNERS.

87. “Shall relieve” gets a new explanation as to the discretion allowed to overseers of the poor from *Lamson v. Newburyport*, 14 Allen, 30. In this case Lamson, who owned a tenement in which a poor person lived, sought to make the town liable for the rent after legal notice. The authorities denied responsibility, and offered the almshouse as a place where the tenant could be cared for if turned out. Here, the court said, the responsibility of the town ceased, and added that Lamson, having refused to avail himself of this relief, could not make his neglect the basis of any further claim.

#### SETTLEMENT BY VOTE OF TOWN.

88. A fixed and definite line with well-established bounds is what the decisions have aimed at and enforced; but there is one recent apparent variation from that rule, so salutary and so often and plainly set forth. This apparent departure, so recent in date, probably has reasons in its favor, all of which do not appear in the report of

*Easton v. Wareham*, 131 Mass. 10; but it must have been an exceptional case which induced the court to defend itself from the charge of introducing a new method by which settlements can be gained. It will, nevertheless, be found, on careful study, to come within a rule as old as the constitution of the towns themselves, which rule is that, subject only to the State constitution, the towns are sovereign, and may do as they will with their own in their internal affairs. It matters not that the decision is hurtful to themselves or is founded on a mistake: it is in their power to make it and to bind themselves by it.

But at first sight it would seem that, where the opposing party was able to show not one act by which a settlement was gained or in process of gaining, the previous dictum of the court, that "*all* the conditions must be proved before the obligation could arise," was hardly satisfied. Easton could show only this fact to create a presumption of settlement, that Wareham had more than once voted, in open meeting, that the Frye family was of the "town's poor"; and that fact caused the court to say that the town was bound by the vote. It will be noticed that at the time this vote was passed the eighth mode of gaining a settlement under chapter 69, by approbation of the inhabitants, was in force; and there was no legal objection to the admission of Frye to the privilege on the day the vote relied upon was passed, if the question had been presented in the town warrant.

89. In a case of unnecessary aid there is little doubt that the court will say that such aid will not prevent the acquisition of a settlement, though there is no direct decision as yet to that effect.

## MARRIED WOMEN — SETTLEMENT THROUGH HUSBAND.

90. "Clause 1, Chapter 83. A married woman shall follow and have the settlement of her husband, if he has any within the State, otherwise her own, at the time of marriage, if she then had any, shall not be lost or suspended by the marriage."

## STATUS OF MARRIED WOMEN.

91. This provision is probably as old as the settlement law of the State, and repeats the conditions of the old English settlement law, from which it was nevertheless a departure, in the fact that it provides that a settlement once gained cannot be lost until a new one is gained here. The English law was based on the familiar principle of coverture following marriage, by which sacrament the rights of the wife were merged in those of the husband or even suspended, in order that she might conform to his status under the law. On this provision is based the famous doggerel rhyme which deserves to be handed down, if for no other reason, because it is the solitary instance in which the settlement law has found expression in rhyme worthy of Mr. Silas Wegg and of the Chancellor Bacon:—

"A woman having a settlement married a man with none.

The question was (he being dead) if what she had was gone.

Quoth Sir Charles Pratt, 'The settlement suspended did remain,  
Living the husband; but, he dead, it doth revive again.'"

92. In that word "suspended" is seen the careful provision that coverture shall not work forfeiture of settlement rights. Coverture still has its place in our settlement law, and is likely to keep it for some time longer in spite of the wider privileges given to women



by the later laws. For instance, *Spencer v. Leicester*, 140 Mass. 224, denies to wives a settlement by three years' occupancy of real estate; *Jane E. Guild v. B. & A. R.R.*, in Superior Court, October 1891, sets forth the principle that a wife not legally separated from her husband cannot have a separate domicile; and *Stoughton v. Cambridge*, 165 Mass. 251, affirms the decision.

#### IS THE APPLICANT A MARRIED WOMAN?

93. At first glance the phrase, "a married woman," would seem to be one not requiring comment or explanation; but in practice there is no detail of the settlement law that requires more investigation than this. If one could assume the apparent fact for the real truth, all would often be easy; but among the people at large, for whose benefit settlement investigations are necessary, at least one in each five will prove to need some further tracing than the apparent surface fact.

#### A CASE IN POINT.

94. Thus, to take a case in point, A. B. married C. D. in Cambridge in 1863, he then having a settlement there. She suppresses the fact, which the record of the 1863 marriage shows, that she was married before; and the whole question turns on that. The evidence of the second marriage is perfect. There is no doubt of identity nor of the settlement of A. B.; but, if her husband, E. F., of whom she tells nothing, was not legally separated from her by death or her divorce from him, she can have no settlement by A. B. "Of her divorce from him," because this remarriage was done long before the present condition of divorce and remarriage made easy was lawful; and she is for the purposes of this settlement

under that law which ordered that the guilty party should not remarry without permission of the court, which she never got.

RIGHT TO REMARRY BY PRESUMED DEATH OF FORMER  
HUSBAND OR WIFE.

95. Where there is a husband or wife who is absent, the right to remarry is generally more easy to settle; for the common law has agreed upon a term of years after which, under proper conditions, a person may legally remarry. The facts in *Hyde Park v. Canton*, 130 Mass. 505, are very instructive; and it is quite certain to be a leading case. A man who had a military settlement in Canton married a woman who had been, seven years before, abandoned by her husband in Vermont, where they had lived before. She came away from her former home soon after he left her, and she had taken no pains since to learn whether he was living or dead. The court, in passing upon this statement of fact, decided that she could not take the Canton settlement, because there was no evidence that she had been in a position to know whether the first husband was still living or not, and nothing offered to show that he might not have returned to the place where he left the wife in a few months after she left the State, and have been living there ever since. It directly affirmed the principle that the common law will justify one who remains in the place where the separation took place, without tidings of the absent, for the space of seven years, in acting on the belief that the absent person is dead, and at the same time laid down the rule that no such belief was allowable by the absentee in regard to the one who remained in the former abode. Under this ruling, logically carried out, neither could

gain rights under the common law, by lapse of time, if both came away from the former place of abode before seven years.

OF MARRIAGES WHERE THERE WAS A PREVIOUS MARRIAGE.

96. Among the half-educated, especially of the older natives of the State with whom relieving officers deal, it is very common to find persons who have honestly taken the law into their own hands, and, upon ascertained facts, have acted in entire good faith, in a manner full of peril, but not entirely illegal. Thus a woman married in good faith, and with lawful ceremonies, finds four years later that the man has a lawful wife still living. As there is no doubt, perhaps by his direct confession, that she is not his wife, she jumps at once to the conclusion that her marriage with this man is void, and falls back upon chapter 146 of Public Statutes, section 4, to prove it.

97. That section provides that a marriage shall be void where either of the parties is partner to an undissolved marriage, but the becoming void is wholly dependent upon the fact and the validity of a former marriage. One who assumes these upon hearsay or apparent facts renders himself liable to various penalties if his action is based on error. If an investigation made after his remarriage shows that he had legal warrant for it, no harm is done; but it is at his peril that he neglects the straight way pointed out and becomes his own judge of the facts.

98. Upon the arising of a doubt as to the validity of a previous marriage, either party to the second marriage may file in court an inquiry to determine the fact, and the decree issued at the end of such a hearing has all the validity and force of a finding in a suit for divorce.

99. What is the status of a remarried person who has not taken these steps? The law presumes, where a state of things has been legally shown to exist, that such existence continues indefinitely until some ending is legally shown. A parcel of land once bought, a marriage once solemnized, are presumed to continue in the relation proven until some contradictory fact is later proven.

100. There is a limitation hinted at above in this doctrine of indefinite continuance, and that is found in the arbitrary assumption of a period of time after which the life of a man is presumed to have ended. So much trouble would follow, in the transaction of business, the disappearance of a man, with the assumption that he was alive, that it has been assumed that, when he has not been heard from or seen by those who live where he lived for the space of seven years, the law will authorize those in relations with him to assume that he is dead. This presumption does not undertake to destroy the effects of the former relation, but only to establish a *modus vivendi*, subject to readjustment if the later theory proves incorrect.

101. Here appears the peril of one who has acted on his personal convictions. Any one of three or four contingencies may overthrow the theory on which he has acted, and leave him outside the pale of the law. If the story of a former marriage is untrue, or if, there being a marriage, it was void for any reason, he has no defence.

102. A man born in 1863 married an unsettled woman in 1890; and they thereafter never lived a year at a time in one place before 1899, when she was supported in a hospital. He never gained a settlement in his own right, but had a derivative settlement by his father,

which his lawful wife could take. He married in 1882 a woman one year older than he, and in that record both gave the marriage as their first. There is no evidence that this marriage has been dissolved by death or divorce. But he has assumed the right to remarry, and bases his action upon the assumed fact that in 1889 a police court adjudged him not to be the husband of a woman with whom he was until that time living (who, he says, was the first wife), for the reason that she then had a living husband. He was arraigned in the court on a charge of taking money and goods from the house where the woman, not he, lived; and it was not larceny if the woman was his wife. He claims that a daughter of the woman, nearly adult, and of course born long before 1882, testified to her mother's previous marriage, and that it was largely on her evidence that the woman (who, he says, was twice his age, and known to every one by a name bearing no resemblance to the maiden name of the woman of the 1882 marriage or to his) was found not to be his wife. There is no evidence in the court record and no fact in the memory of the officer who had charge of the case that any question of marriage was raised. So the alleged finding of the court has no bearing on the case, and the apparent status is this: he did not come within the seven years' provision of the common law, and had no right to remarry in 1890.

103. It is worth while to note, in this case, the effect of the question of identity of the woman in the 1889 trial. If she were proven to be — what the man, perhaps for purposes of concealment, alleges — the person whom he married in 1882, the defence would be very strong; but all the ascertained facts imply that the 1882 wife had disappeared before he formed an association with this woman much older than he.



104. So carefully do the courts maintain the regularity of proceedings in these cases for the undoing of a wrong that in *Rawson v. Rawson*, 156 Mass. 576, the case turned on the fact that, one party to the irregular marriage being dead, the court refused to hear the other side, on the same ground that it would not have conducted an *ex parte* divorce suit with only one of the sides represented.

105. Even in the case of a marriage void by reason of nonage and separation without subsequent cohabitation, it is quite probable that some method of determining that fact, as public as the marriage ceremony was, will be required, with the same dangers as are set forth under the preceding clause for neglect.

#### LEGITIMATE CHILDREN.

“Clause 2. Legitimate children shall follow and have the settlement of their father, if he has any within the State, until they gain a settlement of their own; but, if he has none, they shall in like manner follow and have the settlement of their mother, if she has any.”

There have been no recent decisions casting light on this long existing provision, and it is necessary to make only two brief observations upon it. The first is that the word “follow” necessarily implies that the completed changes which the father, or mother, failing the father, may make in settlement during the minority of the children, will give the children new claims, which will set aside the former ones; and, second, that, if the child has a settlement through its father, it will not change to a later gained or derived settlement of the mother. This provision continually works a division of responsibility for aid given to a widow or remarried woman, since she

may gain by residence in a different place after the death of her husband or by remarriage, a claim which the children, as the legitimate descendants of their father, cannot take, if they had one by him.

WHEN LEGITIMATE CHILDREN CHANGE WITH THEIR  
MOTHER.

106. But, if the children have no claim by their father, the settlement of the mother derived from her parents, if any, will at once become theirs; and, if she should remarry during their minority or gain a settlement by residence, the children may change as many times as she completes a new settlement during the minority of each.

CASE CITED.

107. To illustrate, a woman brought her eight minor children with her to Massachusetts from the Provinces, their father and his ancestors never having lived in the State. Two years after her coming, and while the oldest of her children was only nineteen, she married a man who was settled in Massachusetts; and immediately all her children became settled, through her, in the town of her husband's settlement. Three years after this marriage the husband died, and soon after the woman moved to another place. She lived in that place five years; and at the end of that time the responsibility for aid, in case it was needed, became divided, those children who had attained their majority before the five years ended continuing in the settlement of the husband, and those who remained minors at the end of the period changing with her to the latest settlement. But in case of aid being needed, if it were for one of these who had gained by the step-father only, the town of his settlement would be

liable, and *vice versa* in case only the younger ones were aided, or the mother. One error of construction, not so rare as it should be, may here be noted and warned against. The children mentioned above do not take the settlement of their step-father, technically, but of their mother, who gets one by her marriage. The distinction is a very practical one, as appears: if, instead of marrying a man with a settlement at the time of marriage, she had married a foreigner like herself, and they had together come to the country with her children, not his, and she had died before the step-father completed his settlement, the fact that the step-father thereafter completed a settlement would give no rights to these children, because the mother had no settlement at the time of her death. Or if the settled husband whom she did marry had before, a settlement in some other town than that in which he and she lived, and she did not live long enough for him to change from the original town to that of their residence, the fact that he afterward gained there would be immaterial, and aid to the children would be chargeable to the place of original settlement, if she died without the later one. So constantly does *Taunton v. Boston* affect the construction of the law.

MINOR DAUGHTERS MARRIED ARE NO LONGER CHILDREN.

108. An important exception to this rule of minor children not settled by the father changing with the mother is found in 13 Mass. 469, a case between Boston and Charlestown, which is not a new decision, but is one that is very certain to be followed as long as our present provision is on the statute book. It affirms the very broad principle that female children are emancipated by the fact of marriage, without regard to age, so that they

cannot take the settlement of their mother, which was incomplete at the time of the marriage, even if it is completed while the daughter is still a minor.

MAJORITY FOR BOTH SEXES BEGINS AT THE AGE OF  
TWENTY-ONE YEARS.

109. It is perhaps not unnecessary to say that the age of majority for females, as for males, for the purposes of the settlement law, is twenty-one years, and not eighteen years, as is popularly believed. Various measures of freedom and responsibility accrue to females at the ages of fourteen and eighteen years; but the privileges of personal acquisition of settlement begin for all at the age of twenty-one years, except under the law of military settlement.

ILLEGITIMATE CHILDREN.

110. "Clause 3. Illegitimate children shall follow and have the settlement of their mother at the time of their birth, if she then has any within the State; but neither legitimate nor illegitimate children shall gain a settlement by birth in the place where they were born, if neither of their parents then had a settlement therein."

The last clause of this provision is intended specially to call attention to that alteration of the statute in existence before 1794, which gave settlements to illegitimate children in the town of birth by the fact of birth there. There has been of late years no modification of the provisions of this branch of the law; and it is necessary only to call attention to the equitable addition which was first made in 1853, by which children born without the bonds of wedlock are included in the effects of legitimacy by the subsequent marriage and acknowledgment of the par-

ents. The provision will be found in chapter 125, Public Statutes; and there is nothing in its terms that suggests any official record or adjudication to determine the fact, but only such inference as can be drawn from common report and daily conduct.

III. An interesting question, as yet not mooted, is sure to arise sooner or later, if the present statute continues in force. It can perhaps be better illustrated by example than theoretically. A woman bore an illegitimate son in 1853. She was then twenty-eight years old, and neither of her ancestors came to Massachusetts; but she had lived six years in the place where her son was born, before his birth,—that is, from the time she was twenty-two till she was twenty-eight. The statute says the child shall “follow and have,” etc. Are these terms contradictory, or must we apply them as meaning different but not opposite things? “Have at the time of its birth,” we can understand; “follow” must also mean “at the time of its birth,” and not something the mother gets later (unless by marriage to the father under the last statute quoted), so that we can hardly construe the word “follow” to mean what it does in that of legitimate children,—the right to take a change by acts done after its birth,—for it is believed that the courts have never construed the statute so as to include such rights. But in 1895 the son falls into distress and receives relief. He has done nothing to acquire anything in his own right, and his claim rests on his mother’s. She lived until 1875, long after the clause making citizenship a requisite was repealed (May 26, 1871); and, if she in her later years had applied for aid, having gained no later claim, those very six years, 1847–1853, proven would have given her a settlement, if investigated, say after May, 1874.



112. Could she then have a claim that her son of six could not take? That will depend upon the stress that the court lays upon the word "then."

113. Literally, she "then" had none,—that is, at the time of his birth; but it was given to her by legislation a year after the son was of age, and twenty-two years after the apparently irrevocable word had been spoken. But in *Worcester v. Springfield*, 127 Mass. 540, and *Boston v. Warwick*, 132 Mass. 519, the court steadily construes the statutes so that a retroactive force is given them, which places the rights of the person affected by them in exactly the same light as they would have been in if all the present conditions had then obtained.

114. Still, the modifying word indicated is in this statute alone; and, if the effect of retroaction should be held to include this modification, it will be an additional departure from the obvious letter of the statute.

115. A most interesting case which has been aided in the last year shows the endless diversity of questions that may arise as to the construction of statutes apparently so clearly expressed that no difference of opinion can exist as to their meaning and intention.

The proper scope of this 1853 law will appear to the average reader to be to remove from innocent children the effect of the error of their parents, and to allow the latter an opportunity for amendment. It implies the performance of a delayed duty, and infers, in its equitable construction, that this act, now allowed, might and should have been done years before. Does it apply to the following case? A. B. married in England in 1874 C. D., and lived with her only one year, when she left him; and he never has heard from or of her since, though he remained in London, where he lived before, until

1882, making fully seven years after she disappeared. There was never any step taken for a legal separation by him or against him. About 1876 he began living with E. F., who bore him three children in England before 1883, when they came to America. In 1884 a son was born in the place in which they have since lived, and he was aided in 1899. The father has never paid a tax, and has no settlement. The mother is forty years old, and lived in the place fifteen years without aid. They were married there in 1895, when the boy aided was eleven years old; and the father acknowledges that he is his child.

116. One condition that prevents a tentative opinion as to whether this boy is a State charge or a settled person, is the lack of knowledge of the subsequent history of the wife, C. D. The man says that, so far as he knows, she may be alive to-day. If the fact were shown that she is still alive and still his wife, the apparent marriage is void, the mother of the boy has not legally married the father; and, as she had lived in the place only one year of the required five "at the time of his birth" and had "then" no settlement, the boy also has none, unless by some other provision, having no claim to the five years after his birth under this statute by reason of his illegitimacy. But on the present showing the inference reaches a different result, which will remain until more light changes it.

According to the terms of the common law, [assuming that A. B. tells the truth,] he was justified in believing that C. D. was dead in 1882; and there was no legal objection to his marrying E. F. in 1882, so far as the provisions of this 1853 law go, and so legitimatizing this boy and qualifying him to take his mother's settle-

ment. Suppose an investigation to show that C. D. died in 1894: the 1895 marriage was valid, in spite of the ignorance of A. B. of the fact of her death.

But what would be the fact if investigation should show that she did not die until 1897? That fact would show that by reason of the invalidity of the 1895 marriage the boy was illegitimate when the 1899 bill accrued; but, apparently, a marriage solemnized after the death of C. D. was established would legitimize the children, and thus establish the principle that persons, who could not during the birth-time of their children marry, may render them legitimate by a later marriage.

Furthermore, without waiting for any such facts, ceremonies, or decrees, a reference to section 14 of chapter 145 will make it certain that, if this mother in good faith married the father of her children, there is nothing to prevent them from taking her settlement, though the real wife be still living.

Consider another but not mooted case, though an actual occurrence. A married man, living away from his wife and having a settlement, begets three illegitimate children, their mother having a settlement in another place. Upon the death of his wife, after the birth of all the children, he marries their mother. He could not have married her a year before he did. Are these children legitimized by chapter 145, section 14? There seems no reason to doubt it.

117. It will not be uninteresting to briefly consider the successive steps taken by the two towns who represent the two sides of the English case. The town which aids is always under obligation to prove "all the facts necessary" to establish the claim, while the defendant denies.

The 1895 marriage being shown, the claim is estab-

lished under the statute of 1853. The defendant has learned the facts related above, which show the possible invalidity of that marriage; but he cannot compel the father to testify to them, and, if he cannot establish the fact of the first marriage by other evidence, he will probably be held to pay upon the record evidence of the marriage in 1895. But, even if he establishes the former marriage by good evidence, the presumption of death, 1876-82, would remain, and also during the time from 1883 to 1895, while the final clause of chapter 145 would hold him, if all other inferences failed.

118. While speaking of illegitimacy, it is interesting to note, in passing, that in *Abington v. Duxbury*, 105 Mass. 287, the court would not allow a mother to testify that a child born in wedlock was illegitimate.

#### SETTLEMENT BY OWNING REAL ESTATE.

119. "Clause 4. Any person of the age of twenty-one years, having an estate of inheritance or freehold in any place within the State and living on the same three years successively, shall thereby gain a settlement in such place." It will be seen that this is a method of gaining a settlement without taxation, and the latitude that decisions have given it makes it one of the most inclusive methods. Thus in *Boylston v. Clinton*, 1 Gray, 619, one was held to have gained by this method, having a warranty deed, though his grantor had no title.

120. A verbal bargain, without subsequent deed, with occupancy for the required time, was held in *Brewster v. Dennis*, 21 Pick. 233, to give a settlement by freehold (but only after twenty years' quiet possession). A bond for a deed bearing permission to take the rents and profits gives a settlement in three years (*Randolph v.*

*Norton*, 16 Gray, 395). It is immaterial that the property is mortgaged for more than its full value (*Mt. Washington v. Clarksburg*, 19 Pick. 294).

121. In *Boston v. Wells*, 14 Mass. 384, it was held that the three years of ownership must be also the three years of residence; and in the late case of *Greenfield v. Buckland*, 159 Mass. 491, where one owned a freehold more than three years and lived on it till he went out of the State to work, with declared purpose to return when he had earned a specified sum of money, it was held that he did not "live on the same" within the meaning of the statute.

122. It is probable in this case that there was some fact not mentioned in the report that made the purpose to return more indefinite than the opinion of the court implies; for the *animus revertendi* was surely as clear as in many cases where enlistments in the army, long whaling voyages, and indefinite absences in Europe have repeatedly been held not to interrupt the domicile.

123. Of the purpose to return there was no doubt: it was only the time when, dependent upon his earnings, that could not be stated. It is within the knowledge of many persons that houses standing unoccupied are considered so much worse insurance risks that many companies make their policies to be void after a given time of unnotified vacancy, so that an owner necessarily absent might choose to have a tenant at will in occupancy rather than to allow his house to stand vacant. If this house were so occupied, with no bargain for continual occupancy, it is not easy to see why the case would not fall within the rule of *Chicopee v. Whately*, 6 Allen, 508, in which the court says that a domicile once acquired is presumed to continue until a subsequent change is shown.



Still, the cases that arise often present such contradictory phases that it is almost impossible to found a satisfactory conclusion upon them; and, if the court cannot dismiss that in litigation with Mercutio's malediction, it must often wish that, in place of the absolute finding, — "You have no responsibility, go in peace, for the burden is all on your adversary," — it were possible to assess the contending towns each for its equitable share.

Thus there is now a family so poor and lazy that the freehold in its possession is nearly consumed by the accrued interest on the mortgage. Before many months the mortgagee will take possession, and the place will be sold. It happens to stand on the boundary line between two cities; and the authorities of each, foreseeing the inevitable, have always neglected to tax, not because taxation is a necessary part of such a settlement, but because each was willing that the other should assume that the lot as well as the house was wholly within the bounds of the other place. So the estate has not appeared in the valuation list of either, though the warranty deed, with the name of the grantee as of one of the two places, will always be record evidence of ownership.

#### THE FINDING IS TECHNICAL, NOT EQUITABLE.

124. When the question arises, the court must decide that the case belongs wholly to one city, and not to the other, because no matter how evenly balanced the evidence may be, and however nearly justice would be satisfied by a decree that each place should be charged a moiety of the expense, the law, in the absence of special agreement following the division of towns, knows nothing of equitable assessment of charge, but puts the burden wholly upon one. And, the more evenly the relative

considerations balance each other, the more technical must be the rulings upon which the decision is made.

125. The wildest range of imagination cannot reach that flight in which the Supreme Court of Massachusetts can be conceived as saying that the facts are so evenly balanced upon the two sides that a decree is impossible, and perhaps a decision is at last reached based on reasoning as highly technical as some that were delivered in London in the last century. There the same rule of local obligation, made a thousand times more difficult in its administration by the fact that the lines separating the parishes, which were the units of settlement, ran through crowded districts, reduced the questions to be settled to such considerations as whether the family occupied rooms on one side or the other of the separating line, whether the habitual living rooms were in one parish and the spare rooms in another, and whether the head of the family by whom the rights came lived more on one or the other side of the dividing line. Upon these questions of illegal taxation for the bearing of the burdens of others the battle was as fiercely and as conscientiously fought as was that which their cousins across the sea waged for seven years to avoid an unjust assessment of a nominal tax on their cup of tea.

126. After the opinion of the court was reached in the cases in question, both litigants must have retired from the court-room with a renewed sense of the resources of the law in the hands of a master; and the sadness with which one heard the conclusion announced must have been greatly tempered by a sense of the acumen that was its chief recommendation.

It will be a surprise to many of the descendants of these people, to whom litigation is almost as much a ne-

cessity as breathing, to know that now throughout the United Kingdom pauper lawsuits between towns are unknown. The Commission of Charity, of whom Mr. W. E. Henley, lately in this State, is a member, sits to hear all questions arising, and decides them without appeal once for all. This substitution of the uniform skilled knowledge of an expert for the haphazard judgment of a jury, who often hear the question raised for the first time when called to decide it, is all in the right direction; and, if it were not for the fact that here membership in the Relief Association is rapidly bringing about, in a voluntary manner, the same result, it would be a question whether such a change might not be beneficially introduced here.

#### SETTLEMENT BY POLL TAXES.

127. "Clause 5. Any person of the age of twenty-one years who resides in any place within this State for five years together, and pays all State, county, city or town taxes duly assessed on his poll or estate, for any three years within that time, shall thereby gain a settlement in such place."

128. "Of the age of twenty-one years" shows that the commencement of gaining is from the twenty-first birthday, for both the residence and taxation required. That is to say, neither the tax assessed in the twentieth year nor a fractional portion of residence in the same can count; but there must be three taxes assessed and paid after the person is twenty-one years old, and five full years' residence from the same date.

## EXCEPTION BY REMOVAL OR AID.

129. With one exception there would seem to be no question that any three of the prescribed taxes paid in the five years' residence would give the settlement; but that exception is important, though turning on a principle already indicated,—namely, the completion of the full term of residence in the same period in which the taxes are paid. Apparently, the question can arise only when the third tax is paid in the last year of residence. Then the question will come, "Was the last year of residence, for purposes of settlement, until May 1 of the following year continuous, or was it interrupted by absence or aid or death?" If one came to a town November 1890, paid a tax 1891, 1893 and 1895 only, and in December 1895, or before May 1896, was removed to an insane asylum, he would have lived in the place five years, and would have paid all taxes assessed in three of those years; and yet, following the decision in *Taunton v. Wareham*, before mentioned, 153 Mass. 192, he would have gained no settlement, because the municipal year in which the third tax was paid was not complete before removal.

If he had come in November 1890, had paid 1891-92 and 1894, he might have removed in December 1895, or have been taken to an asylum; and the five years and three taxes would have given him a settlement in the place, as it was only the fact that the third tax fell on the same year that he was unable to complete, that prevented the letter of the law from taking effect in his case.

130. In the case cited it will be noticed that the removal was compulsory, and there was no evidence that the man ever had any purpose to change his domicile. In a case similar to this, where a man had lived three years in a place and was removed thence to an asylum where he

remained nearly a year as a private charge and then returned to the place whence he came, where he afterward lived long enough before applying for aid to make the whole time five years if the time in the asylum were included, it was held by the authorities of the place that the residence was continuous for the purpose of settlement, as it very certainly would have been for voting purposes. The question of domicil for voting purposes and those of settlement is so nearly identical that the same considerations of act and intention arise; and it is hard, except on very technical grounds, to see why a man who could have voted (all other conditions concurring) on the day of his discharge from the hospital should not have been considered, during his involuntary absence, as still having a domicil in the place from which he was taken.

DOMICIL CONTINUES TILL NEW ONE GAINED.

131. In *Worcester v. Wilbraham*, 13 Gray, 586, it is said that absence without a definite purpose to return will not interrupt the residence required until a new domicil is acquired elsewhere. Applying that rule, which has not been set aside in terms, to the first of the above cited cases, it will appear either that there is something in the status of an insane person which vacates his power of choosing a domicil or that the later ruling is not in harmony with the earlier.

132. Nor can the very recent decision, *Greenfield v. Buckland*, 159 Mass. 491, be harmonized with it at all points; for that lays down the rule that domicil follows in a general way the fact of taxation, and implies that absence at the time of taxing, however temporary in its intention, may be considered as evidence of intention of change. From the report of that case, it would be fair



to infer that the court decided that the fact that a person was even for a concededly limited time beyond the reach of assessment would interrupt his continuous residence under both the real estate and five-years clauses. The earlier case, *Paris v. Hiram*, 12 Mass. 262, in which the settlement was under the election to office for one-year clause, while it makes it clear that involuntary removal interrupts the residence, bases the decision upon incapacity to perform the duties of constable by reason of absence, and not on the fact of absence alone. Now, if we paraphrase the language in *Worcester v. Wilbraham*, 13 Gray, 586, and say that one having a fixed home, where he is in process of gaining a settlement, is to be considered as keeping that domicile until his acts show that he has taken another, we shall see how difficult it is to reconcile that broad statement, re-enforced as it is in another place by the dictum that "it would be more correct to say that a domicile once established is to be presumed to continue until removal with a definite purpose not to return," with the conclusion that a short temporary absence will under some conditions effect that result.

"INTENTION" IN REMOVAL.

133. It would be difficult, in one or two sentences, to satisfactorily define the term "intention to change." It is rare indeed among the poor, that such positive conditions concur as to make a given change positive in its intention. "If things had gone as we expected," "if he had got work as he hoped to," these are the half-formed conditional intentions from which we are required to infer a definite fact.

134. But there are circumstances even more perplexing than these in the experience of the visitor, and it is re-

markable how little previous legislation and litigation will assist even the most careful student in his investigation.

CASE CITED.

135. Thus, a brakeman employed on a night train learns that by leaving B. and moving to W. he can have a day train. He goes at once, meaning to move his family as soon as he can find a house in W. He has no doubt that he considered his home to be in W. from the time he left B. Being employed each day till late in the evening, he had only a few minutes each day in which to look for a house; and thus his family remained in B. two months after he left, he never going back there meantime even for one night. At the end of five years, he having lived in W. all the time and paid a tax each year, his family falls into distress, and the question of settlement is raised. It is found that, if the five years is calculated from the time he went alone, he has been five years and a month in W.; but if from the date when the wife and children went, the time is only four years and eleven months. Bearing in mind that the courts have always held that the domicil of the wife is controlled by that of the husband, and remembering that the man had formed and forthwith executed a purpose to leave B. and not to return, we may risk a guess that in case of a suit the court would say that a settlement had been gained in W.

136. Under the question of domicil, mention must be made of *Wareham v. Milford*, 105 Mass. 293, where a man was held to have gained a settlement by living under an assumed name in a town away from his family and paying taxes there, although the town where the wife remained had, unknown to him, aided her during the same time, which decision, besides the question of domicil,

seems also to settle the question that a man must know of public aid in order to be pauperized by its reception.

137. Again; a woman who has a settlement by her husband in B. becomes a widow in 1892, her husband dying in February. On April 29 of that year she meets, by agreement, in P. the owner of a farm which she means to buy. She bargains for it on that day, pays for it, and receives a deed as of May 1 1892, and on that day sends up her hired laborer, who thereafter lives and works upon the place with the stock that she bought and sent up with him. She does not spend a day or a night on the farm, the house being vacant and unfurnished; but she makes oath that from and after May 1 she considered the P. farm her home and place of residence. She comes back to B., and makes all possible haste in arranging her affairs; but it is not until July 1892, that she is able finally to go to P. to live, and she was not there at all between May and July, being busy in settling up her extensive business relations in B. She loses possession and occupancy of the farm May 4 1895. Does her case come within the terms of the statute giving settlement by three years' ownership and occupancy? Can her oath that she considered her home to be on the farm after April 30 1892, be so construed as to make her residence constructively there and her stay in B. to imply no domicile?

138. In *Brookfield v. Warren*, 128 Mass. 287, the court ruled that the intention expressed must concur in point of time with the act done, that the fact that a man had expressed an intention to go to W. to live at one time, when he did not go, raised no presumption, and refused to consider (as the person whose acts were in question was dead when the trial occurred) parole evidence of

intention to move several months before the removal in question occurred.

139. Another case is that of a man living in E. who suddenly had to find another tenement on account of the loss of his own by fire. His business made it necessary for him to live near his former home; and he took a house on the other side of the street while his old home was undergoing repair, never changing his purpose to occupy that again as soon as it was ready. It was late in the fall when he was burned out, and it was not until the 20th of May in the year after that he got back into his home. The street in which he lived makes the boundary between E. and M. and when he moved, he went to the latter place. As he was there May 1, he was legally taxable there, and apparently comes within the rule of change by absence in time of taxation implied in *Greenfield v. Buckland*, 159 Mass. 491; but there can be no clearer case of temporary absence with continued purpose to return than this, and the construction that would produce a different result should argue an interruption of domicil in case of a spring and summer tour in Europe or the South. It may be expedient to adopt a definite, easily proven act as a new rule of domicil; but in the light of the principle much older than the century, that the purpose to return when followed by the act must control, it would appear that the test proposed is opposed to all earlier decisions.

#### WHAT PAYMENT WILL GIVE A SETTLEMENT?

140. "Pays all," on poll or estate. The "or" at the end separates the taxes into different classes, and gives the benefit to him who pays the whole in any year of any one of the classes of taxes named for three years. The

language is concise and as definite as so short a sentence can be made, and the wording of the earlier statutes is the same so far as the enumeration and terms of payment are concerned. If a man were taxed for poll and real for one year, and paid the poll only, the next year were taxed poll and personal only, and paid the personal, the poll being abated, and the third year were taxed poll and real again, and only the tax on real was paid, the disjunctive "or" would appear to give a settlement under this method; but this exact question does not seem to have been raised.

#### AMOUNT OF TAX PAID.

141. Nor, apparently, would that qualification of the amount of the personal estate that was a vital condition, fifth clause, chapter 69, omitted after 1874, be essential here; for in the absence of value named it is as truly an assessment of estate when the valuation is \$50 as when it is \$200. A question as to the possible construction of this statute, under the statute that allowed the privilege of voting to the payer of a county tax only, was raised as to whether the payment of this half of a poll tax did not cover the requirement of paying "all legally assessed."

142. To make this construction seem reasonable, a decision made early in the century was cited, which ruled that abatement was conclusive evidence of illegal assessment, and that only that part of the tax upon which payment was claimed and made was to be considered as "duly assessed." But it was seen that, in order to sustain this contention, it would have to be shown how it was possible to legally assess a man for one-half of the poll tax and illegally for the other half on May 1 in the same year; and the view was never held strongly enough by



any person to give him courage to maintain it in court. While the statute directs that the payment must be made for certain indicated years in a given time, it nowhere names a period within which such payment shall be made; and that fact, which is equally true of all the statutes of settlement, former as well as present, has given rise to not a little sharp practice of a kind now to be mentioned, in the cities and towns, but that will be at an end in 1903, when the amendment, passed 1898, takes full effect.

143. Some years ago a woman living in a place in Eastern Massachusetts with her husband for twenty years, was obliged, by his breaking down into violent insanity, to take steps for his committal to an asylum. The authorities of the place of her residence went over the case, and told her that they would commit him; but, as he had paid only four of the five required taxes, the place of his settlement would have to be notified. She could not consent to that, and said she must try to get along with him at home. At the end of a fortnight she came again, and said that he must be taken, come what would. He was committed in the usual form; and, when the notice was sent and the town authorities replied promptly enough that they doubted the correctness of the statement about the taxes, and suggested a re-examination, that process showed that in the time between the application and the removal a tax of two dollars, assessed four or five years before, had been paid, and thus an annual charge of \$200 for many years to come had been transferred by the payment of a single poll tax.

144. Nor have the sons of these thrifty villagers lost the skill in avoiding or in transferring burdens which their fathers thus showed. Under the provisions of the State aid laws, when so much depends upon the payment

or non-payment of taxes since the war, there is a continual effort, by the paying of back taxes, nominally by the soldiers, often really by the authorities of the towns (under the convenient alias of "expenses in . . . case"), to transfer permanent claims by a prudent, sharp, or fraudulent payment.

A question that has not yet arisen is that of the effect of a payment of such back taxes after aid has been given. Thus, *e.g.*, a man living in a town since 1891 has a military settlement elsewhere. He has paid 1892 and 1893 taxes, and no more. He is assessed in 1894 and 1895, and the payment of either will give him the required three in five. If, after aid in 1896, the town of his military settlement, having paid that bill and wishing to avoid future charges, comes in and pays 1894, will the court give him a settlement, it not appearing that the man himself did not furnish the money? There is nothing in the statute in chapter 83 — which, before the 1898 amendment, names no time of payment — opposed to the view that this might be so decided; and there seems to be no way to prevent such abuse, only to abate as soon as it may legally be done.\*

\* Since the first pages of this work went to the printer, a question of the construction of this amendment has arisen, on the following facts: A man lived in the city of L. from 1892 to May 1897, five years, and paid a poll tax in 1895 for 1894 and 1895, having paid none before. May 1897 he moved to M. and lived there till the fall of 1899, when he was aided. L. was notified and denied, on the ground that he was a State charge, the wife having no five years. Upon receipt of the denial, the man, without prompting, went to L. and on legal advice, paid the 1896 poll and claimed settlement. It is the opinion of an expert official who does not make many mistakes in settlement law, that the statute of 1898 applies in this case, and that as the man did not pay three taxes within the five years of assessment, he is now a State charge. This view assumes that the amendment is retroactive, which it has not been considered to be, but only applicable to cases after July 1898.

But even if the payment of the tax of 1896 can be construed to give a settlement for charges arising after November 1899, with refunding of aid, there is no doubt that it cannot have that effect before it was made. The status of the man at that time determines that question, and subsequent action cannot affect it. A man passes from an unsettled condition to a settled, exactly as from one settlement to another, each condition having its own consequences.

Just as the town of the settlement of a young woman would be held to pay her bills con-

## ABATEMENT TO PREVENT SETTLEMENT.

145. The late case of *Gordon v. Sanderson*, 165 Mass. 375, seems to reaffirm the right of towns to practically refuse the privileges of citizenship to whom they choose not to concede them; and the earlier case, 10 Met. 115, cited by Mr. Hale, assumes the ground that, where the non-assessment was avowedly for the prevention of the acquisition of a settlement, the court will sustain it.

## PROVISIONS OF 1874 AMENDMENTS.

146. Perhaps the consideration of this clause furnishes as good a time as any for some remarks upon the 1874 law and the legal effect of changes from the enactments superseded by it. It will be plain to all that these changes were the logical results of the military settlement law; and, unless we carefully consider the order of their enactment, which order is constantly observed in the appendix, and the nature of the changes that they provided for, we shall not arrive at any permanent knowledge of their provisions or of their true scope, as some explanatory phrases were omitted in the 1878 codification.

147. As was said above, the military law abolished citizenship and long residence as requisites to settlement, so that the way was made ready in 1868 for a provision that persons having the other qualifications mentioned in the statute should not thereafter be prevented from gaining settlement by lack of citizenship. The first case that arose under the act — *Commonwealth v. Sudbury*, 106

traced the day before marriage, and the town of the husband's settlement those of the day after; in this case if the man had no settlement when the expense accrued the city cannot be held. As to the effect of returning two years after, from another town, and paying a tax there seems to be nothing illegal in that, if the taxes remain open for payment, and as the effect of such a payment of tax after aid never seems to have been passed upon by the court, an opinion on the legal effect of the act is much to be wished.

Mass. 268 — brought the decision that the act was in its terms prospective, and could have no effect upon the past. In 1871 it was amended by the addition of the words that conferred retroactive force upon it, and it has since been so construed in the cases of persons alive when the amendment took effect.

148. In 1874 came the law shortening the time required for the gaining of a settlement, without property, from ten years to five, with the payment of three in place of five taxes, with the important qualification found in section 2 of chapter 83.

149. Being intended for the benefit of unsettled persons only in its first effect, it undertook to deal only with them at once, and reserved its effects upon those already settled to a future time. It declared that any unsettled person who had done the necessary acts should be deemed to have a settlement by its passage at once, and that any unsettled person whose time of residence and number of prescribed taxes were incomplete at the time of the passage of the act should, upon the completion of the terms, enter at once upon a settlement. But all those whom the act found already provided must begin to gain new settlements from the date of the passage of the act; and after May, 1874, they might begin to change by five years' residence with the payment of three taxes. The reasonings and the debates that accompanied this legislation are conclusive upon the point that the intention and purpose of it are fully conveyed above; and there is no manner of doubt that, when the legislature enacted that "no existing settlement shall be changed unless the full residence and taxation herein required accrue after the passage of this act," they fully meant by "existing" to define the provisions of the old law and the status of those settled under it.

## THE REFINEMENTS OF JUDICIAL CONSTRUCTION.

150. Those who are curious to see what refinements of meaning careful study will give to the plainest language, may read in *Fitchburg v. Ashby*, 132 Mass. 495, how "existing" may mean and does mean a lightning-like change by which a person now first given a settlement, suddenly has an "existing" settlement by the terms of the act that gives it. Starting with this proposition, which it is difficult to repeat with a sober countenance, the court proceeds to apply to the settlement thus conferred the retroactive force of the decisions in the cases of military settlement, by which the person doing the acts is put in the same position as though the law had existed when the acts were done, and then applies to the case the clause that prevents change from the status thus declared until five years after 1874.

151. The effect of this decision is that the salutary provision of the statute book in effect for a century, that each succeeding settlement shall set aside the preceding, is quite annulled so far as residences and taxes for periods of five years before 1874 go; and now we must look for the evidence of the first place, after May 1 1860, and before 1874, in which a man so lived, and not of the last. This was precisely the question in *Fitchburg v. Ashby*. The man had lived in more than one place five years before 1874 and paid the required taxes in each, and the thing to be decided was whether the settlement was in the first or the later place.

152. The court said the first clause of the act settled him in the place where he first lived, and the last clause forbade that settlement to be changed until five years after 1874. The late Chief Justice Field gave an ad-



mirable opinion in opposition to the majority thus deciding, in which he placed the history and the logical effect of the act in their true light; and it is not certain that a later opinion may not annul this singular construction.

#### DUE LEGAL ASSESSMENT.

153. "Duly assessed." In *Plymouth v. Wareham*, 126 Mass. 475, it was shown that a man had paid three taxes, but one was on a bill made out by the collector, the assessors having for some reason omitted to tax him in that year. Though the money was duly paid over by the collector, the man was held to have gained no settlement, the fact of "due assessment" being as vital as that of payment and one of the necessary conditions.

#### EVIDENCE OF PAYMENT.

154. What is evidence of payment of tax? In many of the smaller towns, and some of the larger, the fact of payment was often very difficult to prove by the only absolute authority, the book of the collector. This officer is by law under a bond; and, as long as there were uncollected taxes for the collection of which his sureties were responsible, he rightfully claimed the sole custody of his books. When the final collections were made, neither he nor any other person cared for the obsolete records; and in one of the larger cities of the State some fifteen years' successive evidences of payments by the citizens were sold in the later years of the war at junk price, while in one of the larger towns, where an examination of the evidences of payment of taxes became necessary, it was found that not one book of the fourteen required remained in town, but some, if in existence,

were among the cast-away papers of the ex-collector in the far west.

155. At first sight it might be thought that the receipted bill would be conclusive evidence, but more than one instance has occurred where in after years the name of the collector has been attached to a bill by a person having no right to do so, for the purpose of fraud. But, setting aside this chance, there is still another of mistake, of which at least one instance is known. A man who had paid two taxes wished to pay the third for a special reason of personal advantage, though he had omitted to do so for more than a year after the tax first became due. In due course the tax, with many others, was legally abated by the assessors; and that fact was duly entered on the books of the collector against the original entry. Now the man stood exactly as though he never had been assessed for that year; and, as the year was then past, no assessment was possible. He did not know of this abatement, and, having lost his bill, went to the office of the collector to get a duplicate bill and to pay it. A clerk in the office, without looking at the collector's book, went to the assessors' list, which bore no mark of the abatement, made out a duplicate bill, took the money, receipted for it, placed the official stamp of payment upon it, and gave it to the man, who left the office before the attempted entry of payment into the collector's book showed the mistake that had been made.

156. Apparently, the last position in this case was precisely that of *Plymouth v. Wareham*, 126 Mass. 475, the man having paid a tax not "duly assessed"; but, if the man, in case of claimed settlement, had come into court with his three bills and the assessors' evidence that he had been duly assessed that year, there is some doubt

if the explanatory evidence could have been gotten before the court.

157. Suppose in a case of the small town, up among the hills, the assessors' list shows an assessment of a poll tax every year for eleven years, and there is no evidence of the payment of the requisite number or of any. The court has more than once ruled that assessment is no evidence of payment (*Dana v. Petersham*, 107 Mass. 598); and, when there are neither collector's books nor bills, there is no method of proving a settlement. Whether the court — in cases where, as constantly happens in the smaller towns, the abatements are carried into the rear of the assessors' lists or kept in a book by themselves, and the fact of the assessment is proven and also the absence from the abatement list — will not allow the jury to find that assessment minus abatement equals payment, is not certain.

158. One thing is clear: the past method or habit, joined to strict judicial ruling, has offered a premium on the loss or destruction of records, and has entailed on the places which have carefully kept their evidence a disproportionate share of the public burden. It is proper to add that all this criticism is of a condition now happily near its end, and that the next generation will have much less difficulty in examining the records of their fathers than we have had in our time, thanks to the persistent action of the Record Commissioner and the shortening-in of the time.

159. It will be better to comment on the sixth and seventh clauses together, as the latter is explanatory of the other.

## SETTLEMENTS GAINED BY WOMEN BY RESIDENCE ONLY.

160. "*Sixth.* Any woman of the age of twenty-one years, who resides in any place within this State for five years together, shall thereby gain a settlement in such place. *Seventh.* The provisions of the preceding clause shall apply to married women who have not a settlement derived by marriage under the provisions of the first clause, and to widows; and a settlement thereunder shall be deemed to have been gained by an unsettled woman upon the completion of the term of residence mentioned, although the whole or a part of such term has already elapsed." For a qualification of great importance, see section 2 of chapter 83.

## HISTORY OF WOMAN SETTLEMENTS.

161. The proposition to give women a settlement by residence, without payment of tax, first took the form of law in 1870. That statute gave a settlement after ten years' residence, and in its terms became operative only from the time of its passage. As only four of the required years had passed when the law of 1874 was enacted, this statute never went into operation.

162. The language of the sixth clause is essentially that of the woman settlement law of 1874; and the explanatory seventh clause is the outcome of litigation under that law, having been enacted in 1879.

163. In the fall of 1876 Somerville brought suit against Boston, 120 Mass. 574, to establish the settlement of a woman more than twenty-one years old, who had lived with her husband in Boston five years since attaining that age; but the court, with the traditional reverence for the *status quo*, promptly decided that the

act did not apply to married women, and it was not until the seventh clause was passed in 1879 that the right to gain was extended beyond single women and widows. *Cambridge v. Boston*, 130 Mass. 357, sums up the reasoning for that conclusion.

#### LIMITATIONS OF THE 1874 LAW.

164. Referring now to the effect of the often-mentioned decision of Judge Lord in *Taunton v. Boston*, 131 Mass. 18, these limitations of the law, not set down in the statute, appear.

165. *First*, THE DESCENDANTS OF NO WOMAN CAN HOLD BY HER FIVE YEARS UNLESS SHE WAS ALIVE AT THE TIME OF THE PASSAGE OF THE ACT OF 1874. *Second*, THE DESCENDANTS OF NO MARRIED WOMAN CAN HOLD BY HER FIVE YEARS AS A MARRIED WOMAN UNLESS SHE WAS ALIVE AT THE TIME OF THE PASSAGE OF THE ACT OF 1879. It is proper here to again remind the reader that all the considerations of these two clauses are absolutely subordinate to settlement by the husband, unless for a five years after his death; and, if he allows the facility of proof of these to divert him from the true course of the responsibility, his mistake will be costly to the place whose interests he defends.

#### TOWN MAY PROVE BY MOTHER.

166. This seems the more necessary to say, because the language of the court in *Abington v. Duxbury*, 105 Mass. 287, and *Dana v. Petersham*, 107 Mass. 598, gave a town the right to prove a settlement by the mother without first showing one to be impossible by the father,—a most valuable right, which all places may often be glad to exercise, and yet a most deceptive or treacherous right,



held only by a contingency, and liable to become worthless with each new item of news. While it is true that many cases must finally be decided upon that basis, it is equally true that an investigator who rests in that conclusion, because he means to put the labor and expense of determining the controlling fact on the place where the woman is settled, puts his case into great danger.

167. If A. notifies B. that the wife is surely settled with him, and he shall hold him unless he can show a settlement elsewhere by the husband, A. practically asks B. to do A.'s work and give A. the benefit of the labor. This is all right, if A. has done all he can; and, if B. knows or can learn more, it is his duty to tell what he knows. But in the other case it is an unreasonable request, as it is right that each town should do its own work; and one has no right to make another undertake such labor under a threat. If the town notified knows its rights, it will so conduct its case that it will be little likely to be so annoyed a second time. If it establishes a settlement that relieves it of responsibility, it has only to deny, and it is no part of its duty to tell the ground of its denial; for it is enough that its ground is sure, and it has only found out what it was the duty of the other to have learned in the first instance. If called into court it can prove its case and the plaintiff will be nonsuit. The time will probably have gone by in which he could notify the real defendant, and he will have no recourse. But the days are gone by in which the towns played such sharp games with each other as shamed the inventors, and now there is a spirit of concession and respect for the rights of others that bears its proper fruit, in a disposition to give as one would be willing to receive.

168. As the question of settlement by residence alone

lacks for its solution the evidence of the tax-book, and often of the directory as well, it follows that the fact is often more difficult to determine, especially in the case of an obscure widow or unmarried woman than in that of a man or of a wife with children. It is unnecessary to repeat here the suggestions that were made in the earlier pages of this treatise as to the best methods of arriving at the facts, and we will pass from the consideration of these clauses with a few brief suggestions as to some special conditions not included as yet in recorded decisions.

#### ABSENCE AS AFFECTING SETTLEMENT.

169. Since the passage of the 1874 amendments a question entirely new in its present bearings has arisen; namely, as to their effect on persons not then or since within the State limits. If a man had lived in a place five years, 1860-65, and paid all poll-taxes, had gone west 1866, and died there in 1870, the son now returning in distress could claim nothing through that residence and those taxes; but how if the man lives in the West until after 1874, and he and the son die there, and the son's widow and children come back in 1890? The court in *Fitchburg v. Athol*, 130 Mass. 370 passed upon this question, but in such measured phrase that it gives little light on any case not exactly like that. We learn that neither one who left the State in 1854 and never came back, nor his son who went away in 1857 and never came back, nor the wife of the son who becomes a pauper in Massachusetts after 1874, gains any rights under that statute, but whether a smaller period of absence on the part of either, before 1874, and if so how much smaller, would have the same effect, cannot be inferred from the opinion.

## CHANGES IN HABITS OF PERSONS TO WHOM LAWS APPLY.

170. The changes that have taken place during the present century in the habits and mode of life of the hired help, whether in families or in mechanical occupations, have brought about conditions that must modify the letter and the spirit of both legislation and judicial opinion in order to conform to the new order of things. Fifty years ago the conditions of the people were fixed and stable. The position of hired laborer or domestic was temporary in its nature, the farm laborer being on the way to own a farm, and the domestic to the condition of marriage and the keeping of a family. Means of conveyance were so lacking and so costly that persons remained essentially where they were born, and to be going from place to place and from one occupation to another year after year was to get the unfavorable reputation of a "rolling stone."

171. In place of this primitive condition we now have a population, numbered by thousands, liable to fall into distress at any time, often having no association or connection with any place other than that in which the best bargain can temporarily be made, and possessed by no purpose of living that may not be changed by the demand for the product that they make. Thus their stay in a given place is conditional, and the purpose to remain depends upon elements over which the laborer has practically no control.

## COMMON CASE CITED.

172. If the case is that of a factory operative the fact may be that she worked in Webster three years, and then the mill shut down and she heard that she could have a

place in Worcester in a family. So she left her name at the mill office, and the agent agreed to send for her if work opened up better in the spring. But it did not, and she took a place in a family in Millbury through the summer. Then in the fall, hearing that the Webster mill was opened again, she went back. Has she a domicil in Webster at the end of five years?

Consider another question. Half a dozen railroads centre at Worcester, and one seeking to go from one part of the county to another by railroad almost inevitably goes through the city. Moreover, it is the natural clearing-house of the county, and women looking for places go there to find them. Many knowing that their stay in any of the suburban towns will hardly be more than a year or two, find it convenient to hire permanently a room in the city where they can keep a trunk and where they can stay a week or a month when out of a place. They will swear truly that they always meant to come back to this trunk, or to the city or town in which they left it, when their suburban place was lost. When they have so hired for five years, is their domicil where the trunk has been and where perhaps themselves have lodged six months in that time? If they are gaining a domicil by the fact of paying room-rent in a place where they come only when the only home they have is lost; namely, that where they temporarily worked, what shall we say of their status when they have lived five full years in one of these working-places? Can we doubt that they would be considered to have gained in the place where they had so lived? And if we do so decide, can we hold, soberly, that a woman can be gaining by her residence in Leicester and by her trunk in Worcester at one and the same time?

173. *Wilbraham v. Ludlow*, 99 Mass. 587 has some comments on the question of domicil while wandering from place to place, without purpose, and it is quite likely that when the cases arise, it may be found that some of those which we now decide upon principles adapted to a more stationary population, will be referred to the rule there set down.

PAUPERIZATION OF MOTHER BY AID TO CHILD.

174. It is interesting to note that among the principles applicable to women since the 1874 legislation, through judicial construction, though finding its justification in rulings three hundred years old, is this; that aid granted to a minor child will not interfere with the gaining of a settlement by the mother in the same five years. This is clearly set forth in *Gleason v. Boston*, 144 Mass. 25, and a succinct statement of the facts reported will aid the reader in understanding the details of the case, not forgetting that the 1898 legislation has put the mother hereafter under the same civil disabilities as the father was under before.

175. The father of the child was living away, and not contributing to its support or that of the mother. The woman was working and paying the board of the child, and the court held that a sum of money advanced by the Overseers of the Poor of Boston, for the payment of the child's board did not affect the status of the mother, as she was not responsible for the support of the child. There was nothing in the opinion given by the court that gave ground for the inference that the aid would not have prevented settlement, if shared by the mother in her home, as the case turned on the fact that the aid was solely and exclusively for the child, and no question was raised of the mother's being entirely self-supporting.



176. There have been no decisions in the last twenty years relating to settlements gained under the eighth, ninth, and tenth clauses, and students will find in Crocker's notes and in Mr. Hale's Manual all the older decisions.

#### THE MILITARY SETTLEMENT LAW.

177. The military settlement law will be found in "Clause eleventh:—Any person who was duly enlisted and mustered into the military or naval service of the United States, as a part of the quota of any city or town in this Commonwealth under the call of the President of the United States during the late civil war, or duly assigned as a part of the quota thereof after having been enlisted and mustered into said service and who duly served for not less than one year, or died or became disabled from wounds or disease received or contracted while engaged in such service, or while a prisoner in the hands of the enemy, and his wife or widow and minor children shall be deemed thereby to have acquired a settlement in such place, and any person who would otherwise be entitled to a settlement under this clause, but who was not a part of the quota of any city or town, shall, if he served as a part of the quota of the Commonwealth, be deemed to have acquired a settlement in the place where he actually resided at the time of his enlistment. But these provisions shall not apply to any person who enlisted and received a bounty for enlistment in more than one place, unless the second enlistment was made after an honorable discharge from the first term of service, nor to any person who has been proved guilty of wilful desertion, or who left the service otherwise than by reason of disability or an honorable discharge."

178. The first military settlement law was passed May

13th 1865. As was before observed, it restricted the benefit of settlement to persons who had for six months before been residents of the place on the quota of which they served, and who had attained the age of twenty-one years. But it carefully provided that the families of those serving on the quota of any place should receive relief at its hands or in any other place where they might fall into distress, in a special form and not in the State Almshouse, even when not technically settled. Where the present act provides that the claimant shall have "duly served" one year it reproduces the language of the act of 1865.

#### VARIATION IN TERMS.

179. A later modification provided that he must have "continued in such service for one year," the present wording having been reintroduced with the codification in 1878. An amendment in 1868 struck out the requirement of previous residence, and omitted the age qualification, and both disappear from that time. It was not until 1870 that the provision giving settlements to residents who served on the State quota and were not credited to any city or town, was passed, and the only essential modifications since 1878 are those that have come by judicial interpretation.

#### JUDICIAL INTERPRETATIONS OF THE LAW.

180. In no department of the law relating to the relief of dependents have the decisions more taken the color of legislative enactment than in this. The result aimed at has been wholly equitable and in the interest of humanity and fair dealing, but it is impossible to see in some of the decisions any of that unwillingness to go beyond

the strict letter of the statute which the court has often claimed for itself.

181. Thus, the statute sets out to define a class to whom the benefits of the enactments shall be extended, limiting its application to the date of a named event, and it is impossible to see, how, under this clause, one who was in the service before there was any call for troops, can be considered as enlisting under that call.

#### CASE CITED.

182. But in *Boston v. Mt. Washington*, 139 Mass. 15 it was held that a man who was already enlisted and in the service, and by clerical error was included in the list of men counted, was to be considered as having gained a settlement in the place to which he was assigned by the commission which sat for that purpose. The court says, in effect, "The assignment was irregular, and should not have been made, but you got the benefit of the mistake, and it does not become you, twenty years after, to come in and ask to be relieved of the consequences of a condition which you would gladly have created at the time."

#### A MAN ILLEGALLY IN THE SERVICE GAINED.

183. The case of *Sheffield v. Otis*, 107 Mass. 282 where a man after being a year in the service was discharged as never having been legally mustered, illustrates another phase of the tendency to attain to equity, rather than to follow the letter of the law.

What does the law consider a year's continuance in the service? In this as in other applications it takes no account of parts of a day, and if a man enlisted July 1, 1862, and was discharged June 30, 1863, it will consider

him as serving a year, though the enlistment was in the afternoon, and the discharge in the morning. But where the validity of an act depends upon the time of day when it was done, evidence will be admitted to determine the point.

A woman marrying on the day of the death of a former husband, would be presumed to be legally married, but a court would hear evidence that she was married in the morning, and that the husband did not die till night. In 6 Gray is a case where the validity of an act turned on the question of the precise hour in the day in which a writ issued, it having been done on the day in which the law affecting the case took effect.

#### WHEN DO LAWS TAKE EFFECT?

It is an error more or less widely spread in the community, that all laws have a certain period between enactment and operative effect, presumably for the purpose of giving all an opportunity to learn their provisions. Reference to chapter 3, section 1, of the Public Statutes will demonstrate the error, and will show how it originated. Of three classes of enactments only one, namely those to which no time of taking effect is annexed, have any intermediate period: these have thirty days. Of the other two, those to take effect at a named day in the future, take effect on that day, and those which by their terms go into operation from and after their passage, are operative from the hour in which the governor approves them, or from that in which they become laws by any other legal form.

184. "Duly assigned" covers the cases of the naval enlistments which after being collected from the books of the receiving-ship, were distributed proportionately

among the cities and towns by the commission of which Ex-Governor Clifford was chairman. In the first years of the war the seaport towns lost half as many men as in the inland towns were available for the army, by the rush that took place into the naval service. Of the crew of one of the cruisers which carried the flag into the Mediterranean in 1861, all but a small fraction were from Marblehead, and the "Niagara" frigate largely recruited her seamen in Gloucester in the year after. In 1863 there were nearly thirty thousand Massachusetts men, serving in the navy and not included in any assignment of quotas. As they had gone almost wholly from half a dozen seaports, and had by their going, in that degree diminished the capacity of their several places of abode to furnish men, there seems to have been no good reason why they should not have been counted and assigned wholly among the towns of their residence, and the somewhat communistic principle on which the inland towns were allowed to share in the credits of these men, certainly showed no lack of generosity in the chairman, himself a New Bedford man. As said before it was one of these "duly assigned" men, who was unduly assigned by error, whose case raised the question in *Boston v. Mount Washington*, 130 Mass. 15.

#### CHANGE IN TERMS OF THE LAW.

185. "Duly served," "continued in such service" seemingly equivalent terms, have proven on trial to mean very different things. Judge Devens in *Lunenburg v. Shirley*, 132 Mass. 498 says that men who deserted and escaped to Canada were always amenable to military law, and so were in the strictest sense continuously "in the service," while by no fiction could such men be considered as "duly serving."



186. "While engaged in such service" still waits for a competent definition, and the constructions put upon the words cover all the space between the lavishness that would give the soldier everything, and the rigid construction that would leave him nothing. Some persons who have thought that the disability clause was intended to do, under State law, as much as and no more than the General Government does under the pension system, have argued that some specific act or condition by which the man was specially injured while a soldier is necessary to be shown; that all men, with advancing years, have rheumatism and bronchitis, and that the State never intended to guarantee against these, but only against such ills as come specially by the exposures and perils of war, and *Ashland v. Marlboro*, 106 Mass. 266, certainly supports that construction. To this it is answered that it is mean to split hairs with the men who dared and risked everything that we might now have the leisure to sit in judgment on their rights, and that "while engaged in" clearly means while under contract to do the work of enlisted men. The other party, unconvinced, answers that the inclusion contended for, brings in conditions so indefensible that no man could contend for them for a minute.

187. Thus, a man returning from leave of absence, comes on board ship while still drunk. He pitches over the gangway to the deck, fractures both wrists, and is permanently lamed. All this happened during his term of enlistment, but was his disability received or contracted "while engaged in such service"?

#### MUTINY DURING PERIOD OF ENLISTMENT.

188. A company of sailors going to Aspinwall under charge of an officer, form a plan to rise and take the

steamer on which they are passengers. It becomes necessary to shoot and kill the leader. The hardest claimant for service pensions and unlimited aid to the wearers of the blue and their posterity, would hardly see his way clear to ask a reward for such service as this, ending with such a death, but if "while engaged in such service" means "during the period of his enlistment," it is certainly true that this man met his death within the time named.

#### CONSTRUCTION OF DISABILITY CLAUSE.

189. In the other extreme of construction of the language of the act we have the case of a man who fell from his hammock at night upon a bolt in the deck below, and fractured his spine. This literal constructionist says there can be no greater absurdity than to claim that a man can be "engaged in" any "service" while he is asleep.

That proposition he never will concede, and a man must be prepared to show some act of real service before his claim can be entertained. What this extremist would say to the claim of the family of a man whose body was cut in two while lying in his hammock at night, by a shell from a shore battery, does not appear, except that the "or died" clause might make him doubt, but to the average reasoner his case does not appear different, in principle, from that of the man who fell. But twenty years ago, in a suit in the Superior Court where an official discharge under the seal of the Navy Department was offered, with the personal evidence of the surgeon who made it that it could have been made only as the result of direct observation, to the effect that a boy seventeen years old was discharged from a Naval Hospital, after three months' service, of which only two weeks

were on a ship in commission, by reason of habits of self-pollution, the judge refused to allow the evidence to go to a jury, and ordered a verdict for the plaintiff, saying that if towns submitted boys to the possible contaminations of the berth-deck, they must abide by the results. As bearing on the credibility of evidence, it is worth stating that the boy in question, then a man of thirty, and father of three children, stated, under oath, that so far was he from being guilty of the offence charged, that he had no idea now in what it consisted. The judge appears to have believed this. The case was not appealed.

Meantime the courts have not tried to establish a formula to which all cases can be adjusted, and at present each case is tried upon its individual merits. Least of all have they formulated such a hard-and-fast rule as that announced by the Pension Bureau, in 1864, by which an inherited tendency to certain forms of disease shown to exist, as rheumatism and consumption, outweighed all evidence of contraction in the line of duty, and caused the rejection of a given claim. So far as it goes, the weight of decision is mildly in favor of the proposition that the disability must be shown to be the result of some act or condition in the line of duty in the term of the enlistment.

#### DISABILITY THAT GIVES NO SETTLEMENT.

190. That there are forms of disability which terminate a man's service in less than a year, which nevertheless give no claim for settlement, appears from *Ashland v. Marlboro*, 106 Mass. 266. In this case the court says that in a certificate of discharge for disability which does not give the cause of discharge, there is no pre-

sumption, (as there is in the case of ordinary discharge which is presumed to be honorable if not stated otherwise, *Brockton v. Uxbridge*, 138 Mass. 292) but it is in each case a question of fact. And in *South Scituate v. Scituate*, 155 Mass. 428, with a neutral certificate of disability causing discharge, the Court admitted parole evidence of epilepsy before enlistment.

#### TWO CERTIFICATES OF DISABILITY.

191. The most embarrassing cases are those in which there are two discharges for disability. Reference to the terms of the act will at once establish the proposition that if no additional disability is contracted under the second enlistment, no new settlement will be acquired by such service and discharge, and that view is affirmed in *Wayland v. Ware*, 104 Mass. 46. Under this statute and decision A. B. who was discharged for gunshot wound in the chest, after ten months' service, who a year later enlisted on another quota as a veteran, but found that his strength was not equal to the pressure of his belts, and the labors of the drill, and so was again discharged after four months' trial, gained no new settlement by his second service, but remained settled by the first.

192. The trouble in these cases, as they now arise is, that the discharging officers could not look far enough into the future to guess what the requirements of the laws would be, and so satisfied themselves with certificates that omitted much that is vital to the decision.

#### WILFUL DESERTION — ABSENCE WITHOUT LEAVE.

193. "Or who has been proved guilty of wilful desertion." Absence without leave is not desertion, but

*Milford v. Uxbridge*, 130 Mass. 107 defines it as the crime known to the Articles of War. *Fitchburg v. Lunenburg*, 102 Mass. 358 and *Hanson v. South Scituate*, 115 Mass. 336 set forth the doctrine that the offence must be proven by trial and conviction, a charge not being sufficient.

#### DESERTION AFTER HONORABLE DISCHARGE.

194. A very intricate question was presented for the decision of the court in the case of *Cambridge v. Paxton*, 144 Mass. 520. A man served in the navy on the quota of Paxton more than a year, and was honorably discharged. He then served on the quota of Boston, and ran away. He gained no civil settlement after the war. Cambridge argued that as the court had repeatedly said in the last ten years, that all these cases must be decided as though the present laws had been in force when the acts were done, it followed that upon the honorable discharge from the first service the man must be considered as then having gained a settlement that no subsequent misconduct could take away. Those curious in following the reasoning by which the Supreme Court avoids deposition into a cavity on one side, and injustice on the other, will read the opinion of Judge Devens, in this case, with much interest, for that opinion maintains the honor and dignity of the faithful soldier, while it carefully vindicates the consistency of the court.

195. As was said before, the giving of a retroactive effect to statutes not in terms so expressed, is the natural extension of that principle as distinctly seen and expressed in the military law.

196. The first instance of it was in a question of the effect of the law of 1874 as set forth in *Worcester v.*



*Springfield*, 127 Mass. 540. As the history of the case involves a consideration of some of the vital changes of the last thirty years, and as an understanding of it is necessary to a comprehension of *Cambridge v. Paxton*, it will be profitable to spend a short time in a consideration of the facts upon which the decision was based.

197. A man born abroad of an unnaturalized parent, applied for aid in 1877. He was more than twenty-one years old in 1862, when he began to live in a place, and lived there until 1867, paying three taxes in the five years. He gained a settlement there unless he had one before, having gained none since, so that when he applied for help in 1877, the question arose whether he in 1862 had an "existing settlement." If he had, the residence and taxation between 1862-1867 had no effect in changing it, but if he had none, he became settled in 1867, as that was his only five years' residence since coming of age in 1861. He was twelve years old when his father landed in 1852, and the father had only nine years in which to gain a settlement that the son could take before 1861.

198. Directly after coming to the State the father bought a freehold in W. and lived on it more than three years before the son was of age. By so owning and living he would have then acquired a settlement, only for the fact that he never became a citizen. When the son became of age the father had no settlement, as the law then stood, nor for ten years after. In 1868 (chapter 328, section 1) an act was passed, repealing the provision of citizenship as a requisite to settlement, and in *Commonwealth v. Sudbury*, 106 Mass. 268, the court denied retroactive force to the enactment. So it was not until

the amendment to the 1868 Statute, in chapter 379 of the Statutes of 1871, that the father first became vested in a settlement. But though the son had then long ceased to be a minor, the court held that the settlement of the father took effect at the end of three years' occupancy, and that the son, then being a minor, would have the benefit of the right, so that he would have an "existing settlement," and not rely upon his own residence in S. between 1862 and 1867. For the application of this principle to the conditions of military settlement, the reader may consult *Newburyport v. Worthington*, 132 Mass. 510. After this digression which seemed necessary to a proper understanding of the brief of Cambridge in the Paxton suit, we return to a consideration of the statutes of military settlement.

199. "Or who left," not "who shall be proven," as in the preceding clause, but the simple matter of fact, to be determined by the existence or non-existence of an honorable discharge. In the other case a hearing and recorded finding of the result are necessary, here it is a question of fact, and to be determined by a paper in the hands of the claimant perhaps, but certainly by the papers on file at Washington. In the case of the soldier final discharge papers were made on durable parchment and were thus reasonably sure of preservation.

#### ABSENCE OF NAVAL DISCHARGE COMMON.

200. The navy discharges, from time immemorial, have been made on slips of ordinary paper, and it is their common fate to be in four pieces at the end of the first year, and thereafter to be mounted upon a piece of blank paper that covers the descriptive list on the back. The

care with which the records of a man are necessarily kept by the paymasters with whom he serves, makes the tracing of a given history at Washington an easy matter, and it is often possible to follow enlistments back for years. The absence of the discharge paper therefore, is not conclusive against a man, but the absence of the record at Washington, of course, is.

In the case of sailors, where the neat shore outfit, with no pocket in the whole, left the man no choice but to carry his valuable paper in his cap, a chance breeze or a lurch into the gutter after a glass too much, caused a loss that it was sometimes difficult to make good.

#### ASSUMED NAME.

201. *Milford v. Uxbridge*, 130 Mass. 107 decides the question that a man may gain a military settlement by serving on the quota of a place under an assumed name. Of course there must be positive proof of identity.

#### NATIONAL LEGISLATION UPON MILITARY SERVICE.

202. In considering this matter of honorable discharge, it is impossible to avoid mentioning the extraordinary legislation by which Congress sought, in 1889, to amend the records of the war. It was proposed, by this action, to reopen the muster-rolls, in which dishonorable discharges had been recorded, for the admission of evidence showing the error of the original record, and provision was made in the act for the issuing of discharges based upon the new finding.

Perhaps no one would doubt that there were cases where the hurry and confusion of war times opened the door wide for mistake and injustice to individual reputations, but the later move to rehear those questions, with

so much vital evidence now forever lost, must have given rise to much error on the other side. But for better or worse, the act was passed, giving persons supposed to be aggrieved by the standing records, three years, from March 1889, to file evidence to disprove the justice of the records, and under the act, after such proof, they might be reversed, and an honorable discharge given.

CASE CITED.

203. It never can be known whether more wrong was undone or committed by that act, but one man who came out of it with an honorable discharge, whose case was afterward carefully traced, seems to have come to what did not belong to him. He was sent north to Readville wounded. He lived only eight miles away, and was allowed to go home on a furlough. He never went back, and when the regiment was mustered out, he was properly marked as a deserter or in any event, as one who left the regiment otherwise than by honorable discharge. If a deputy sheriff who hunted a month for him in 1864 had lived, the man would hardly have dared to make oath in 1890, that in all the six months of his absence he was at the house of his father, in the town in which the sheriff lived, when he went on his furlough. Now his parents are dead, and the soldier is the only man found who believes or says he remained in town. His father's brother and many others say he was at home less than a month, suffering from his wound, and they believe he was out of the State after that. But he was restored to the status of a good soldier, and holds an honorable discharge on the ground that he was all the time at home, and did not go back to camp because his wound was too severe to allow of his travelling that distance.

What is the status of this man under our settlement law? One who did not look at the date of his discharge, under the broad seal of the United States, would say that he gained a settlement in the town on whose quota he served. But that date shows that it was a conclusion arrived at, a quarter of a century after the man's immediate fellows had put on his career the official seal of dishonor. And while he was thus designated, in official records according to the language of Judge Devens, in *Cambridge v. Paxton*, 144 Mass. 520 as "one to whom the benefits of the settlement law do not apply," the military settlement law was passed which seemed to leave him among those proven by record to have left the service without an honorable discharge.

There is no doubt that the statute of 1889 and the action under it relieve the man from the penalties of the military law, and place him in the way of receiving such other benefits as it is in the power of the Pension Bureau to award, but whether they reverse the record of that period, so that they would be considered conclusive as to the fact, or whether in case of suit, the town of alleged settlement would be allowed to prove that the first statement was right, is a question of great interest, involving perhaps a construction of the Federal Constitution, and its relations to Massachusetts law.

204. Here follow several citations of decisions in cases of military settlement, not commented upon at length in other parts of this book, but of which the gathering here will be a matter of convenience.

DISABILITY MUST TERMINATE SERVICE WITHIN ONE YEAR.  
*Wayland v. Ware*, 104 Mass. 46.

CREDIT ON QUOTA GIVES SETTLEMENT, EVEN IF QUOTA MORE THAN FULL. *Wayland v. Ware*, 104 Mass. 46.



ABSENCE WITHOUT LEAVE NOT DESERTION. *Hanson v. South Scituate*, 115 Mass. 336.

MILITARY SETTLEMENT GAINED AT END OF FIRST YEAR'S SERVICE, IF FOLLOWED BY HONORABLE DISCHARGE. *Newburyport v. Worthington*, 132 Mass. 510.

205. It is impossible to condense the subject matter of this decision by a majority of the court only, into a headline. The question came on the support of a married daughter of a soldier, who had a legal settlement in N. in 1864, and then enlisted on the quota of W. He served till 1866, and until his discharge it could not be known whether he would receive an honorable discharge or not.

206. Before 1866 the minor daughter was emancipated by marriage, and Worthington claimed that as the daughter was "no longer a child" when the settlement was given by the statute, her settlement was still in Newburyport. But, as stated above, the court decided that the father changed at the end of the first year of service and before her marriage.

207. "Sect. 4. No person who has begun to acquire a settlement by the laws in force at and before the time when this chapter takes effect in any of the ways in which any time is prescribed for a residence, or for the continuance or succession of any other act, shall be prevented or delayed by the provisions hereof; but he shall acquire a settlement by a continuance or succession of the same residence or other act, in the same time and manner as if the former laws had continued in force." By this provision it will be seen that one who had begun to acquire a settlement, say in 1868, would complete it in 1878.

## OMISSION OF ONE METHOD OF GAINING IN 1874 LAW.

208. The one change in the law, as passed in 1874, aside from the lessening of the time and of the number of taxes, was the omission of that provision found in chapter 69, clause 5 of the General Statutes, which gave settlements by assessment of personal property of the value of two hundred dollars for five years together, in the place where the person taxed lived, in the same five years, whether any of the taxes so assessed were paid or not (*Westbrook v. Gorham*, 15 Mass. 160). It was probably omitted because the new mode, in all but the smallest number of cases, would always include the other. Nevertheless, although no longer on the statute book, that law is still operative, at any rate for persons dying before 1878, and one settlement has been conceded under it very recently. The man, an alien, was taxed for personal property of the value of two hundred dollars every year from 1860 to 1865 inclusive, and paid no part of any of the six taxes. He lived until after 1871, when naturalization ceased to be a condition of settlement, and died in 1872 with a settlement thus gained, which his legitimate daughter took in 1897, failing one by her own residence, and by her husband.

## SETTLEMENT CAN BE LOST ONLY BY GAINING ANOTHER.

209. "Sect. 5. Except as is hereinafter provided, every legal settlement shall continue until it is lost or defeated by acquiring a new one within this State: and upon acquiring such new settlement, all former settlements shall be defeated and lost."

210. The exception with which the section begins relates wholly to a time limit before which investigation is impossible in most of the towns, and the practical pur-

pose of the section is, that when a settlement is once shown to have existed in any place, the claim thus established can be set aside only by showing a later claim in another place, saving the exception at the beginning. This provision which has been a part of our law for a very long time, gives children of persons who left the State early in the century a claim upon the rights that the parents would have had if they had never left the State, when the children come again within the effect of our poor laws, by return to the State, in a destitute condition. While these descendants remain away its provisions of course do not apply, and there is no reason to believe that a court would uphold the legality of aid sent by an overseer of the poor of the town of M. to a person living in Connecticut, simply because the applicant or his ancestors had formerly had a legal settlement in M., for the statute that defines the duties of the overseer, limits their exercise to "poor persons found in their midst," and the residents of another State certainly do not come within that description. But this limitation has never been so closely construed as to deny the right and duty of overseers to provide for their own poor, though temporarily living elsewhere.

#### CONTINUING EFFECT OF SETTLEMENT LAW.

211. Section 5 is in marked contrast to the somewhat inhospitable provisions of the settlement laws of New Hampshire and Vermont relating to the same subject matter, which not only provide for the permanent loss of settlement by short absence, but make the provision very practical in its effect by punishing, by fine and imprisonment, those who attempt to bring about the return of the poor person to his former home.

This provision of our law bears with very unequal and constantly increasing force upon the older towns, for the obvious reason that Cambridge with a corporate existence of two and a half centuries, must for many years have many more returning emigrants than Lawrence which has only one fifth of that age. While the provision is eminently humane, it has offered such unequal advantages to the descendants of former residents, long absent from the State, when compared with the provisions made by other States, that a statute enacted in 1898 will cut off the right for those who remain away ten years, after 1898. It will be noticed that under the clause as now in the Public Statutes, chapter 83, the third and fourth generation may return, after an absence of three quarters of a century on the part of its ancestors in the west, and claim its continued right. It was undoubtedly such considerations as these that led the commission lately in session, to recommend the modification of this statute provision into some harmony with that of neighboring States, and caused the legislature to adopt the amendment in chapter 425, section 2, 1898.

212. Before proceeding to a consideration of the sixth section of the law of settlement, it might seem more in order here to comment upon the rights of settlement that come by adoption, but for the reason that this branch of the inquiry can more clearly be treated in connection with the consideration of the marriage statute, the comment will be found in the later sections.

#### LOSS OF SETTLEMENT.

213. "Sect. 6. All settlements acquired by virtue of any provision of law in force prior to the eleventh day of February in the year seventeen hundred and ninety four,

are hereby defeated and lost, except when the existence of such settlement prevented a subsequent acquisition of settlement in the same place under the provisions of the fourth, fifth, sixth, eighth, ninth, tenth, eleventh and twelfth clauses of section 1 of this chapter, or under corresponding provisions in other statutes existing prior to the passage hereof: and, provided, that when a settlement acquired by marriage has been thus defeated, the former settlement of the wife, if not defeated by the same provision, shall be thereby revived."

214. This very technical and involved addition to the body of the settlement law, passed in 1871, need not detain us long, as its purpose and effect are not difficult to understand, though its language is, necessarily perhaps, obscure. Its main purpose was to cut off the necessity for the investigation of claims existing before the close of the last century. Owing to the very careless way in which the records were kept, especially the evidences of the payment of taxes, in the later years of the last century, it may well be doubted if there were ten places in the State where a settlement by the paying of poll-taxes before 1800 could be proven, and to prevent the uncertainty and fruitless labor that such cases occasioned, it was thought wise to bar investigations before the time named, which was the date of some new provisions.

#### EXPLANATION OF 1871 STATUTE OF LOSS.

215. What is the nature of settlements that prevent the acquisition of a later one, and which are those that come within the above exception? Only those where there was a continuance of the residence after 1794, and of the acts after that date, which would have given a settlement, if there had been none before.



If a man had gained before 1794, and he or a son continued to live in the same place, and to do the same acts, for a sufficient period, after 1794, to give him a settlement but for the fact that he already had one, that case is within the exception. But if, remaining in the place after 1794, he does not do those acts, or going to another, fails to do them there, that case comes within the statute of loss. For further exposition of the bearing of this clause on existing fact, the reader is referred to *Bellingham v. Hopkinton*, 114 Mass. 553, to *Adams v. Ipswich*, 116 Mass. 570 and also to the statement and reasoning in this treatise, in the consideration of clause 2 of the Act of 1898, which changes the date for the application of these provisions, from 1794 to 1860.

216. But in reading *Bellingham v. Hopkinton* the reader will readily see that upon the facts as there stated, the explanation of the effect of the law given above arrives at a result different from the opinion of the court in that case. The question was whether a man took his father's settlement, derived before 1794, (with no act done after in the same place by which one might have been gained), or his mother's derived long after 1794, in another place. The court decided that the marriage defeated the later settlement of the wife and gave a settlement to her by derivation of the husband from his ancestors before 1794, and mentions, in its opinion, the fact that nothing was done toward gaining a new one, after 1794. But the explanation of the effect of the amendment given is that on which the action of officers is always based.

#### THE 1898 AMENDMENTS.

217. In chapter 425 of the Acts of 1898 may be found the latest amendments to the settlement law, and that

chapter will now be briefly reviewed, in the order of the sections, for the purpose of showing the bearing of each amendment upon previous legislation. The interior history of the origin and enactment of these different sections shows plainly the fact that they owe their existence to a different theory from that which has suggested and practically directed the principal legislation upon this subject, in the last thirty years. But in the purpose of the various provisions, the fact is even more apparent, showing that while the effect of recent legislation, before 1898, had in many cases been to extend and increase the privileges of the poor at the expense of the towns, with a consequent reduction of the charge of caring for the unsettled poor, the provisions of the 1898 law throw into the rank of unsettled poor large numbers who have heretofore been settled, while they contain mandatory provisions which cannot fail to increase the expense of caring for persons, who were unsettled before the change, by making temporary aid more continuous. In other words, much of the legislation before 1898 was prepared and carried through by influences connected with the care of the State unsettled poor, while the later enactments owe their presence on the statute-book to the support of the agents of the cities and towns, and show, in many of their provisions, the evidences of the conflicting theories and interests that have always been manifest in the business relations of the State and the towns. While men have always loved, and do still covet, power and extension of authority, this difference shows each of the contending bodies anxious to divest itself of authority, and to devolve the control of its wards upon another. It is with no theory of the greater fitness of the other to perform the duty of caring for these, that each seeks thus to

shift the burden, but the State officer sees in such a clear light, the unspeakable benefit of the condition of settlement, that he is willing to bring all within its happy limits, by successive lowering of the conditions, while the town-officer would be glad if all his cases were State charges or settled in some other town.

STATE *versus* TOWN AID.

218. The expediency of making all the persons relieved, at last dependent on local aid, is a question upon which relief officers are not agreed, each, perhaps, looking at the supposed consequences from the standpoint of the interests of his own municipality, rather than of the State as a whole. Theoretically there seems to be no reason why the cities and towns should pay an auditing board for apportioning their own money back to them, and if a law making all municipalities liable for aid to "poor persons found in their midst," without reimbursement, could be certainly followed by one making an equal reduction in the State tax, it would seem that the expense of State visit and audit could be saved.

Without doubt a dozen manufacturing cities are vitally interested in maintaining the present condition, and if their interest is the interest of the State as a whole there is no more to be said.

But many considerations of thrift and business accountability protest against the present plan however necessary it may be. The manufacturers in these cities, hire large numbers of foreign operatives, knowing that with each turn in the balance, whether by sickness or strike, the State stands ready to take the burden off their hands, thus securing their profit. The local relieving boards, looking for reimbursement, have no motive for strict

economy, and no fear of that inquisition that follows them in the treatment of the town poor and makes March meeting a day of judgment. They wait the word or letter of the State visitor, and allow a case to run on two or three weeks more, because the State is to pay. Perhaps a careful comparison of amounts would show that a late crisis in a seaboard manufacturing city cost the State more money than all the temporary aid in all the farming towns west of the Connecticut in the same time. If so, the question is only a natural one: Why should they be called to pay any part of the bill?

For the benefit of the learner in the details of relief to the unsettled poor, a sketch is here given of the manner of daily routine followed by the local officers in all the cities and towns.

The reader knows, probably, that the State gives no relief, the giving being the business of the authorities of the place where the applicant lives, exactly as though he were settled there, or in some other place. It is the fact that a person is poor and "stands in need of relief" that entitles him to help, and the man who landed a year ago is just as truly within the care of the overseer of the place in which he lives, as he who can trace his ancestry back to Plymouth Rock.

When the aid is given, the city or town giving looks to the State for reimbursement, and it is in following the somewhat complicated provisions in the statutes printed herewith, so as to secure the largest amount of reimbursement, that the efficiency of the town agent is seen. The following lines will give a general idea of the scope of these statutes, and of their practical operation.

The State poor are divided into three classes: (1)

those too sick to be sent to a State Almshouse; (2) those who need temporary aid to tide over emergencies, or whose friends can only partially support, and (3) men whose wives and children are settled in the town of residence or in some other town, the men remaining unsettled. The first class,—the sick, admits of a subdivision, of those who are sick with contagious diseases, who cannot be moved at all while thus sick.

For each of these three classes of poor there are different rules and terms of reimbursement. The sick can be so aided only while too sick to be moved, at no fixed rate per week, and aid given can be reimbursed from a date five days before notice to the State.

The second class, formerly called the State Temporary Aid cases, have no time limit, can be aided to no larger amount than two dollars a week in the summer six months, and three dollars a week in the winter six months, and aid cannot be given and collected before notice to the State. These until 1898 could be aided only for four or eight weeks at a time. In the wife settlement case, so called, there is no time limit, though in this as in the other two, the suggestions of the State Visitors as to continuance are always considered by the relief officer, and generally adopted. The notice and bill for the total amount given in the wife settlement cases are sent by the relieving town to the town of settlement of the wife, if the case is aided in some town other than that of her settlement, and by that town to the State which audits it for the man's share. Towns may aid wife settlement cases two months before notice to the State. The notice sent in all these cases is to give residences and other particulars, so that they can be found and visited, which is always done without unnecessary



delay. But the Board of State Charities is not only, what its name might imply to an inquirer, a guardian of the interests of the unsettled poor, but a very steady influence in the care of the settled poor throughout the State.

At first, under the name of Alien Commissioners, it took charge of the inspection of the enormous immigration of the middle of this century, and stood between the influences, in foreign countries, that would have flooded the State with born paupers, and the interests of the people of the State.

One by one, various duties connected with the settled poor have been placed in its hands, such as care of the insane in hospitals, the visiting of children boarded out, and the periodical inspection of the town almshouses, so that now "supervisor of municipal charities" would not be an improper addition to its title. Its visitors, trained experts in settlement law, carry into all the towns of the State their knowledge, and give much assistance to new or rusty officials in business relations with the larger places. They would not be as efficient as they are if they did not keep the town-agents active in considering their widely inclusive interpretations of settlement provisions.

Upon the question of State or town supervision of the poor it would seem not to be too deep a problem in political economy to get comprehended at last:—that the State has no money only what is raised by an annual tax from the cities and towns, that of the sum so raised, for the State poor, a considerable part is consumed in the expenses of visitation and of audit, in order to determine in what proportion re-imbursement shall be made, and that unless a town is quite sure that it receives more, in

the form of re-imbursement, than it pays out in the form of State-tax, it is a loser by the communistic arrangement.

So much of introduction seems necessary in considering the scope and drift of the new legislation, because the present tendency of town-officers is in the direction of devolving larger numbers and new classes on the State, so far as pecuniary liability goes.

#### TAXES MUST BE PAID IN THE FIVE YEARS OF ASSESSMENT.

219. The purpose and effect of the amendment in the first clause is to prevent the payment of taxes after the time has gone by in which they were assessed. It provides that they must be paid within the five years, but there is no provision in it to prevent the payment of all or any of the five in the last day of the five years, if they then remain open for payment.

The effect of the second section is to annul the settlements of those persons, who, having a settlement before May 1860, have not since gained a new one in the same place.\* It is an extension of the principle involved in section 6, chapter 83, of the Public Statutes which cut off all settlements gained before 1794, but unlike that, does not state under what provisions or sections of the statutes the later settlements must have been gained to bring them within the exceptions, and thus raises the question whether the provisions of the Act of 1874 will apply to give a settlement between 1860 and 1874, or

\*The accurate user of phrases will object that in the use of the phrase "gained another" the writer states an absurdity. When a man once has certain things nothing can add to the fact of having. If he has gained a settlement by paying three poll-taxes in five years, he will have no more of a settlement if in each of the five succeeding years he paid a tax on 'a million dollars' worth of property. So this easily comprehended equivalent means, simply, "has done the things that would have given him a settlement, were he not already in possession of one."

whether it is only under chapter 69 of the General Statutes that it can be gained.

QUESTION AS TO EFFECT OF AMENDMENT.

220. The advocates of the first contention claim that it is the existence of a previous settlement that prevents the acquisition of one by five years and three taxes from 1860 to 1865, while the other side contend that the terms of the 1874 law, unmodified in that respect by this, provide that no settled person shall thus gain by five years and three taxes, until after 1874. The question waits judicial interpretation, unless an amendment of two lines shall settle it. On this see opinion of the Attorney General in appendix.

221. Section 3 provides that hereafter a mother shall be pauperized by aid to a child (she not receiving aid) as the father was under former statutes, but shall not be liable to imprisonment as he was and is.

222. Section 4 provides that evidence of ability of kindred to support a poor person may be heard by one judge of the Superior Court, and that claim for reimbursement of such support may go back two years, as claims between towns now do. Section 5 repeals the temporary aid law of 1877, and substitutes for it an aid law for unsettled persons, without time limit, but with limit of the weekly amount of total aid, at the same time placing upon the Board of State Charities the duty of removing to State Institutions the persons whose aid shall be stopped at home. Section 6 somewhat enlarges the list of institutions who may be compelled to give to Overseers of the Poor evidence of the deposit of money with them, by persons or relatives of persons who are or may be in the receipt of public aid.

## APPLICATION OF CLAUSES OF CHAPTER 84.

223. Having considered the principal methods by which settlements are gained, and the recent decisions of the courts which define the application of the conditions therein stated, it will now be useful to direct the attention, for a short time, to some of the rules of proceeding set forth in chapter 84 of the Public Statutes. These provisions are of the greatest importance, for by them we learn the methods by which the provisions of the settlement law become operative between the towns, and the limits of the powers and liabilities of each, when interests conflict. As will appear from a careful consideration of each, these statutes are the result of an attempt to reach an equitable medium between contending interests, and to the student who reads them for the first time it will often appear that the rule bears hardly upon one party, to the advantage of the other. For the purpose of illustration of business methods and tactics in this field, three or four instances are now given for the benefit of any reader who in the future may care to know what the work was, and how it was done. Though the different narratives have little technical value, as illustrations of settlement law, they will not be found uninteresting, especially to students of the Yankee character, in its business developments. But the overworked man of business may safely omit all from page 135 to page 147.

## THE RULES ARE EQUITABLE.

224. If it had been the fact that he who was hurt by the provision in question was always to be in the same relation, and he who gained was always to have the same advantage, it is inconceivable that some of the provisions in chapter 84 ever could have been enacted, so inequi-

table do they seem. But it was clearly in the thought of the legislator that the plaintiff of today would be the defendant of tomorrow, and so that the seeming leaning to one side was really only the readjustment that kept the centre of equity more surely within the base. In considering the terms of any statute we must not forget that all practical law is a compromise which strikes its line between ideal justice and the wrong it aims to remedy. To seek the attainment of absolute equity is to go upon a fruitless errand, and the legislator is too often obliged to content himself with the form of modified good which Portia commends to the Duke, and to accomplish a great good by doing a little wrong. Besides, any view of the law, as an agent of equity, which does not also comprehend the natures and conditions of the men who are affected by it and who are to administer it, must be faulty and one-sided. It is in this view and with this knowledge that the provisions of the law we are now considering find their justification and indeed the necessity for their existence.

If later conditions have improved the relations of the towns to each other, so that former restrictions are less necessary now, we shall see the effect sooner or later, in modifications of the statute. Meantime we must remember that these provisions are the outcome of a condition which has now passed away forever.

#### THE SUPPORT OF THE POOR ALWAYS A HEAVY BURDEN.

225. The burden of public expenditure, borne wholly by the annual tax-levy, was always so heavy that the towns sought in all available ways to lessen it. In many of them the support of the poor was publicly sold to the lowest bidder and when competition was sharp, we may



believe that official scrutiny was not too vigilant, later on, to see that the successful bidder did as well by his charges as another would have done. Thus while a rigid, hard-fisted economy was practised toward the resident, settled poor, and those having no settlement were so often carried out of town limits and dropped, that a statute to prevent that abuse became necessary, it was in dealings with other municipalities, in the preliminary arrangement of settlement responsibilities, that the highest usefulness of the warlike overseer of the poor became apparent. For it does not exaggerate the truth to say that in the first half of this century the towns were at war with each other on this matter of the responsibility for the aid of the poor. Investigations were conducted and plans were laid with all the secrecy that is connected with military campaigns, and to heighten the resemblance to the exigencies of a soldier's life, men of sober, honorable Christian character, continually did, for their towns, services dishonorable and mean, and such as they would have been ashamed to do for private ends. A comparatively small knowledge of the details of individual cases suggests the following examples of what was then constantly occurring all over the State.

226. A woman left her husband in a place where both were known, by the fact of aid, to the overseer of the poor, and went to a place fifteen miles away, having first gone through with an invalid form of marriage, with a man settled in another place. Neither she nor her new husband had any claim on the place where they lived, and when they fell into distress, the place of his settlement was notified, and hers, by her deception, was assumed to be his. When, after four years of aid, the fraud was discovered, the overseer of the place from which she

came said, "I knew you were aiding, all the time, and that she and the illegitimate children that she was bearing belong to us."

And yet though his relations were most friendly with the defrauded place and he met its officials often, he could not see that it was his duty to do as he would be done by.

227. In another case a woman, a hereditary pauper for two generations, was lying in an almshouse waiting her time. The chairman of the overseers of the poor who fortunately for such purposes was a justice of the peace, sent to a neighboring town and caused to be brought before him one of the persons who had shared the favors of the patient in past years, and who, moreover, had the crowning advantage of an undisputed settlement in a neighboring town. Though brought to the almshouse by a constable, there was no legal warrant in the case, and the constraint which the man believed to exist, was wholly in appearance, or even fraudulent. The man was at once married to the patient by the chairman, and was then told that he was at liberty to go where he would. The same night the woman bore twins, and the next day the town of settlement was notified, and came and removed her and the children to their almshouse. As all these facts relating to the means by which the burden had been changed were then as well-known as now, it is easy to believe that the town, which has always been ready to defend its rights in the courts, would cheerfully have spent five hundred dollars to establish any possible defence, rather than take a case in such a manner. One of these twins then born was the subject of a suit in the last decade, and though the detail will lead us for a minute away from the subject under consideration, it is

worth relating if only as illustrating the changes that a generation witnesses.

The town which had taken the little girl and her mother to its almshouse was the defendant in this later suit, also, and showed that all methods of proving a settlement through the father of the girl had been lost by a fire that destroyed all its records, long after the transactions related. Under these circumstances, though the plaintiff offered evidence that the town of alleged settlement, in addition to the acts related above, had paid bills for the support of the family at other times, the court ruled that there was no evidence that would warrant a verdict that the father of the girl ever was settled in the defendant town. This ruling was in the Superior Court, and the case was not carried up. If it had been, perhaps some of the justices remembering the inferences that were allowed to supply the lack of positive evidence in the Wareham Frye case, might have thought that these acts of the recognized town officers, whose business it was to know, done under such extraordinary provocation, were quite as clear evidence of settlement as were the votes of citizens at large, passing upon a collateral subject. Fortunately for the defendants any compromising vote of the town was safely at rest with the tax-records.

228. But to return after a digression. An overseer of the poor looking over the tax-list of his town saw on it the name of a man who had moved from a neighboring town more than nine years before, and had paid a tax every year. If he continued to live without aid until spring his settlement would change. He never had been aided, but perhaps there was some circumstance in his character or conditions, that suggested to the vigilant

mind of the official that it was better that he should not gain a claim there. The difficulty was that it was only through pauper aid that the claim could be prevented, and the man never had asked for aid. One night he was approached by a friend, who had been carefully instructed by the overseer what to say, who told him that men not half so hard-working as himself were going down to the town-hall and getting a barrel of flour for Thanksgiving time, and there was no doubt he could do the same. The next evening brought him down to the place, and he was very thankful for the kindness that had singled him out, and profuse in his gratitude. Just as he left the room some lingering suspicion came into his mind, and he walked across the floor to where the guardian of the interests of the town sat. "Look here," said he, "taking this will not have anything to do with my right to vote, or my being a citizen, will it?" "Oh no," answered the other, "all that will be just the same." So he took the aid, and the settlement was postponed for another ten years. It was a revelation in ethics to hear this good old retired official twenty years after, tell this story. He had given up the cares of office to younger men, and now merely shouldered his crutch and showed how fields were to be won to those who cared to listen. The wise side-long smile with which he repeated the little evasion which served for a pontoon over the gulf of lies was worth going miles to see, and there was in all the rehearsal no suggestion of any feeling but the consciousness of high duty well done.

229. A woman seventy years old, having a settlement in a place, was living there with her daughter, a soldier's widow, who had through her husband a claim elsewhere. The daughter had been living in the place three years,

and at the end of two more, without aid, would also have a settlement in the same place as the mother. She had a skilled occupation, and earned as much as twelve dollars a week for the support of herself and children, and of her mother who was entirely dependent upon her. The mother fell sick and aid was asked, beside the attendance of a doctor, because the daughter was kept from work, though her credit was so good that neither she nor her children were in any need of public relief.

The place of her husband's settlement was notified, and the aid was assumed to be for the family, as well as for the mother. Here the purpose clearly was, by involving the family of the daughter in the consequences of aid, to postpone the time of her change from the husband's settlement, (though the children would, of course, have continued,) because she must live five years without aid to so change. Was this a case in which aid prevented the acquisition of a settlement? There was no litigation in consequence of the incident, and so no governing decision followed, and we can go no further than to apply the natural inference to the words of the statute, as interpreted by decision. Were the family of the daughter "standing in need of immediate relief" when the aid was given? If not, the doctrine of *New Bedford v. Hingham* before cited, strongly implies that no result of defeat of settlement will follow where the aid is unnecessarily given.

#### PAUPERIZATION BY AID.

But the town giving the aid answers that the daughter and her children joined in the consuming of the supplies paid for out of the public treasury, and charged to the town, and that that fact settles the question. On the



other hand, it is proper to say that they cannot thus beg the question, for the just settlement of it involves the consideration that the relieving officer may have used the public funds illegally, or at any rate have construed the statute incorrectly. It is surely too broad a statement to make, that all those who eat the food or are warmed by the fire that the public fund provides, are pauperized by that fact. It may very well be that the gentlemen who made this inference have themselves found it convenient, at their annual session, to dine at the almshouse, from provision as surely made at the public charge as any that they officially issued, but it is inconceivable that any such legal consequences should have logically followed, or should have seemed to them to follow.

230. So in the case of an adult son, a pensioner, living with his mother, who during his absence in the war, contracted a habit of receiving public aid that clung to her after he came back and resumed his trade of machinist. There were only they two, and his wages were ample for both. She belonged, by a later marriage in the town where they lived, he in a neighboring place. He fell sick with a temporary heart-trouble, and when his wages ceased she thought at once of the poor-relief, and spoke to him about it. But she had received none since he came from the army, and he dissuaded her, telling her that he should soon be at work again and that meantime their credit was ample. He thought he had settled the question, and so was angry when, two hours later, she came into his room with arms full of groceries drawn from the overseers of the poor. "Then I scolded her, and she cried," but did not carry the things back. So he joined with her in using the supplies that neither

needed, and ten years after, this aid, thus unnecessarily given, was invoked to show that the three taxes paid before the aid and two after, gave no settlement because of it. On the facts as stated above, the case was denied by the place of military settlement, and the other did not feel sufficient confidence in its ground to take the chances of a suit to enforce its claim. There is one extension or application of this principle of non-pauperization by aid that requires a passing notice in this place, on account of its being strongly held by some departments of local relief agents, as well as by some State officers. It is this: "that some conditions of support in penal institutions do not pauperize the person who suffers imprisonment, for the reason that aid to pauperize must come out of the pauper appropriation. It is not enough that the receiver is supported by the funds of the county or of the State: — so long as he is not aided, either originally or by notice, by the overseers of the poor, he is not pauperized. There are grants made by cities and towns for public purposes, in the benefits of which all citizens share, without any taint of public relief, such as hospitals, libraries, and many others, and the support of these cases which is distinctly provided for by statute in other ways than from the appropriation for the poor, brings them to the same effect. A man who had lived two years in a place and paid two taxes, and then served two years in State-prison, would upon one year's residence more, with one more tax, in the same place, have a settlement there."

There is a phrase in Judge Shaw's opinion, in 1 Metcalf 572, that seems to support this construction of effect of aid, (though certainly not the contention that involuntary absence will not affect domicile) in which, in speak-

ing of these cases supported direct from the State Treasury, he says that "in this respect he is not regarded or treated as a pauper," though he is then speaking of one sent to a house of correction, and not to State-prison.

Bearing in mind that Judge Shaw, in *Charlestown v. Groveland*, 15 Gray 18, says that "every person is a pauper who receives relief at the public expense, and such as is provided by law for persons standing in need of immediate relief," and in *Wood v. Burlington*, 1840, that one is not less a pauper because the relief is made necessary by the fact of confinement, and it becomes quite probable that the phrase from the opinion in 1 Metcalf will not bear so liberal an interpretation as would seem to be necessary in order to bring his authority to the support of the reading given. But the interpretation is believed to rest rather upon the statute than on the opinion.

#### AID TO DEFEAT A SETTLEMENT.

231. A native of Massachusetts, seventy years old, temperate and respectable, received aid in the place where he had lived for several years without paying taxes. When the town of his origin was notified, it made no objection to paying for him, and he was aided on its account for a year or more. Again, after an interval of six years, he fell into distress, in the place where aided before, and then it was found that either he, or some interested friend had paid taxes enough, so that the settlement was changed to the town of residence. At this time aid was necessary for only a few months and then the case disappeared from the knowledge of the relieving office, and so continued for four years later, when a notice from the town of original settlement again called it up. Both the man and wife were then

nearly eighty years old, and the request for two dollars a week in cash did not seem unreasonable. As the case was nearly a hundred miles from the place notified, it happened that it was not visited, but was assumed on the basis of the excellent record at the time of former aid. Thus it came about that it was nearly two years before it was seen, during which time the aid was at intervals continued. It chanced that a case occurred near this at the end of that time, and that fact caused a visit to the old man. He lived far away from the railroad, and in a place where each person knows all that any one needs to know of all the other inhabitants.

To the visitor accustomed to the close-mouthed reticence with which his inquiries in the city are met, often by those too conscious of the fragility of their own glass houses, there is a delightful contrast in the breezy freedom with which details come to him in rural districts. If only he will pledge himself not to give the name of his informant, his knowledge of details will presently be bounded only by his sense of propriety and decency in questioning. But it is only as a trade, or more vulgarly a swap, that these things easily come, and the visitor must here also make himself at home. He need not tell anything improper to be told of his business, but if he is not interested in the horse of the man who drives him across the country, or in the daily life of the driver, he will not travel an easy road, nor reach a satisfactory rest.

In this case the man to be found was well known to the driver, and when the visitor made known his usual occupation, the question at once followed whether the applicant was to be seen because of some information he could give. "No, because he was aided." "He never got no aid." "Well, you must know the business of the

overseers better than they do. I saw one of them an hour ago, and he told me he was aided." "Wall, I swan, I don't know what to make of that. Why, you know he lives on his own place, wuth five thousand dollars, and has got money in the bank tew." "Well, you must be talking about a different man of the same name." "No, mine is the old man who lived up to — till four year ago. You knew about his brother sendin' for him and makin' over his property to him, didn't you?" Divested of the driver's expletives and connectives and elisions, and charges to secrecy, the story ran that four years before, the well-to-do younger brother had separated from his wife, and had paid her a sum of money to extinguish her right of succession in the estate. Then he had sent for this brother, and on his arrival had made over to him, by recorded deeds, his real and personal property, on the condition that he and his wife should care for him through his remaining years. Both had lived on the place until the spring before the visit, when the brother died. So much the driver knew and the old man, who was at home, told the rest. He had used the bank-book, the figures in which he was not willing to tell, up to the death of his brother, and there was still some amount on deposit. There was no mortgage on the farm. In answer to the question as to whether he was still receiving aid, he said he had voluntarily taken himself off in February, when the brother died. Asked why he applied for aid under the circumstances, he answered with apparent truthfulness that he never did. Then with a profession of long-standing wish to have a chance to make the explanation that he was now to make, he went on to say that soon after he took charge of his brother, the overseer who lived near



him came to him and asked him what would become of the brother if both lived so long as to consume all the interest in the place. Then the altruistic official asked him if he thought it quite right to come down in his old age, and eat his brother out of house and home? And in answer to a disclaimer and a question as to what could be done, came out the stratagem of the official, which is readily seen when it is remembered that the man was now living on the property on such a tenure that at the end of three years he would again be the proper charge of that town, if meantime he were not aided. He told him that he ought to apply to the place from which he came, for aid, and when asked if that place would be willing to aid, said there was no doubt of it. The notice of aid given contained no hint of the facts, and they were revealed only by the visit.

Here, also, there was no adjudication that the case did not come within the spirit of the statute, but it is not a matter of doubt that if it were again to arise after the expiration of three years including some part of this time, the question would be mooted. In this particular case the issue was complicated by the fact that there had been no legal denial, and so the place of settlement was technically held. But apparently not, if the ruling in *New Bedford v. Hingham* was applied, for in that, the fact of the family not being "in need of immediate relief" was ruled to obviate the necessity of a legal denial.

#### TRACING A SETTLEMENT UNDER DIFFICULTIES.

232. With the detail of one other case, not falling properly under any one section of the law of settlement, but illustrating in itself something of the intricacy which is the characteristic of many of these cases, and to some

investigators including the present narrator, their principal attraction, involving also a little of the diplomatic finesse of the trained official with more than its proper share of the romance of human life, this branch of our considerations will end, and though there may be little instruction in the details given, in which the actual facts, known to many living men, are rigidly followed; it is believed that they will not prove to be lacking in interest to that large class among whom nothing that concerns the daily life of those who surround us is common or unclean.

Forty-three years ago a woman of American parentage, inheriting from her ancestors a full share of those traits that in adult life bloom out, in the least emergency, in pauperism, married in Lynn a sailor of English descent. They lived together in Boston until she had three children, and then he left her, marrying two other women between 1860 and 1866. The wife went to her home in the country, and there lived with her children till about 1865 when she went to a place near, where there was living a bachelor, also purely American, having a settlement in the place where he lived. With that utter lack of inquiry which is so charming and so constant an accompaniment of marriage contracts, he married her, and continued to live in the place of his settlement. Here she bore him, in rapid succession, four or five children, illegitimate of course, and as she had gained no settlement by her English sailor, the charge went back to the town of her father's settlement, which for ten years, supported not only her and her growing family, but also without legal necessity, the father of her later brood of children, he having grown to be as shiftless as herself. The association could have been broken up at any time by remov-

ing her and the children to the town of her settlement, but the case drifted and grew worse year by year.

It was not until a daughter by her valid marriage, having become sixteen years old, showed unmistakably her legitimate descent from the old stock by bearing an illegitimate child, in another town, that the authorities of the place of settlement fairly awoke to a knowledge of the burden that was upon their hands. Then they employed an agent to do what it was impossible, by lack of time or capacity, for any of them to do, namely, to see if there was no way out of the trouble. It was now more than fifteen years since her husband had been heard from, and more than seven since she had gone through the marriage with the father of the second brood of children.

Bearing in mind that when a marriage ceremony is shown, those who contest its validity will have the burden of proof, to show why it is not valid, the town of the woman's settlement denied that the settlement was now with them, alleging a change by a marriage proven with a man having a settlement in the town notifying. To the claim that the marriage was invalid by reason of her former marriage, the answer was given that there was no evidence that her first husband was living when the second marriage was contracted, and that if he was not, there was nothing to prevent her and the children of the second marriage from taking the settlement of the second husband. The effect of this move of course was to put on the claimant town the burden of proving a wandering man to be alive many years after any of the parties interested had last heard any tidings of him. The denying town, in making this move, believed that it would be impossible to find him, and felt sure that the long-continued claim through the woman's ancestors was at last

ended by the mere lack of possible evidence which would invalidate the second marriage. Technically, in the light of the later case of *Hyde Park v. Canton*, the defence was weak, in the fact that they could not have shown any evidence that the husband had not, in later years, come back to the place where he left her.

But the resources of the veteran official who long gave the law and the practice to northern Middlesex were not so few as his opponents believed, and it was not many weeks before he came to them with the story that the long-lost husband was where he could be produced at any time, when needed to invalidate the effect of the second marriage. Hereupon arose many interesting and vital questions. Was he the real man or only one who might pass for him? It was now more than twenty years since the wife had seen him, and in that time the war had occurred, with all the chances of a sailor having served on some quota for a year, that would give a claim not only to the new brood of children, but also to the wife and the children of her valid marriage. And if he had served on no quota, there was still the chance that in the many years of absence, he might have acquired a civil settlement that would practically relieve the town of the wife's settlement from further charge.

But this wary and high-tempered old gentleman had not been sent on this long and difficult search for the benefit of the town which had just escaped from his tyranny by a sharp construction of the marriage-law, and to all inquiries as to the history or present residence of the man, his only answer was: "That don't make no difference. I have found him and I am going to put her on to ye, and so that she will stay tew." This with a closure of the jaw and a lowering of the eyebrow such as

might have been seen on his father's face a hundred years before when he was lunging a bayonet thrust at a Britisher on Concord road, closed the case so far as a voluntary disclosure by himself went. So he was told that the town did not care to spend money, to fight a lost case, and that if he would satisfy the authorities that he had found the real man, and that he had gained no new settlement, there would be no further contest, but that if he would not accede to these terms, he would be obliged to produce the man in court, inasmuch as the case never would be taken upon his statement alone. As he had seen the man only after a promise that no tracing of him should result from his now coming forward for a purpose, the terms proposed left him in a hard strait. In vain he assured the agents of the other town that the man had never been in the service during the war, and never had lived a day in Massachusetts in the last twenty years; they insisted that they must know that such a man was now living, or they would fight.

So the official went back to his thoroughly frightened fugitive, and after long effort prevailed upon him to consent to meet one agent of the contesting town and acknowledge his identity, if he could be assured that no effort would be made to track him on his return, or to arrest him. As the word of the overseer was considered ample guarantee against a later settlement, these terms were accepted, and soon after, the agent saw in a railroad station in Boston a man who easily convinced him that he was indeed the still lawful husband of the woman in question. So the burden so nearly dropped was again taken up, and all hope of relief seemed at an end.

It was perhaps six months after the man was left sitting in the station with a respectable brother who fully



identified him, if there had remained a lingering hope, and who also said he had not seen him for twenty years past, and meanwhile no trace of the man had been found, when one day an agent who had known the details of the case, but never had seen the missing husband, went to the Charlestown receiving-ship on business. It was blowing a stiff north-easter, and the visitor, coming up from the landing carried his umbrella over his back, like a schooner running before a gale with a square sail set. Coming round the upper edge of the dry dock was a man with umbrella in position exactly opposite to that of his own: that is, exactly at "charge bayonets." As he stubbed along, into the teeth of the gale, only the lower six inches of his two sturdy legs were visible to the man running down before it, but the way in which those heavy farming boots drove their toes into the muddy surface of the ground was characteristic of one man, and only one. What was he doing here on such a day as this? And even if the guess as to identity was right, why should he be here on a settled case? The time and place of meeting left no occasion for settling such queries, even if it had seemed best to be recognized by him, which it did not, and it was not till a month later that a chance visit of the overseer seen in the gale to the man who saw him, gave opportunity to test the theory then hurriedly formed. That theory was: "the missing man is a sailor, he has been since the war on the receiving-ship, the receiving-ship is not Massachusetts soil, by which the agent makes his story technically true, and he is now going on board to see him for some purpose."

#### A FLANK MOVEMENT.

When the business on which he came into the presence of the theorist was done, and the visitor had said

“good-morning,” and was ready to go, the other managed to get a look square into both his eyes, and then rapidly and at the same time indifferently asked, “By the way, how long has —— been on the receiving-ship?” If instead of that question asked, he had thrust a needle at white heat into the breast of the old man, he would have shrunk back in the same way, with both hands tossed a little into the air. If only he had waited a minute he might have answered, “What ——?” or even “I don’t understand what you are talkin’ about,” but the suddenness of the question left him outside his burrow, and the wily old fox gasped out, “How did you know he was there?” before he realized that the secret he had sworn to keep was no longer his.

#### THE MISSING MAN FOUND.

The description of the man brought back by the agent who first saw him in the station was given to a time-taker in the navy-yard the next week, and he was requested to find the man under whatever alias. He soon returned answer that he had been employed in the yard and on the ship for the last ten years, and so, by opinion of justices, 1 Metcalf 580, not in Massachusetts for settlement, if living there, but in a capacity that allowed him to live six miles away in a neighboring city, where an investigation showed him to have paid a tax for many years past, with the consequent gaining of a settlement there that entirely relieved the defendant town. Upon that evidence the case was denied and further expense ceased. It is proper to say, in ending this part of the case, that there was probably no wilful misleading in the story of the official, as to residence. It was a mistake, but not a lie, or if there was a lie it was told to him, and not by

him. What he thought was the truth served his purpose, and he looked no deeper.

If he had, he would have found there was a romance connected with the case. When the father of this much-marrying sailor landed in America, it is quite likely that the death of his wife may have made it proper to place the boy in an educational home which then, as now, offered its excellent privileges to boys who had lost their own homes. He was there but a short time when the visit of a gentleman who came from a town near the place where the institution was, opened up an avenue for promotion and usefulness, if the boy had not been radically bad. It was proposed by the gentleman to take him to his place, and to give him the education and privileges of a son, and if he proved worthy, to adopt him. But the relation that the boy at once established with the gentleman's daughter who was a little younger than himself quickly ended that plan, and with it the advantage of the institution connection. The boy went his way, and in due time the young woman was respectably married in her native town, and lost her husband by early death, while the boy went to sea and then to his marriage in 1856.

On one of the returns of the vagrant sailor from his long voyages, it chanced that in going up Broadway, New York, he met this widow, and though they had never met since childhood or little later, there was in some way a recognition. Then there was a revival of the tenderness on her part that had sent him away many years before, and as he readily professed himself a widower, they were married in New York at that time, and he had lived with her, as before stated, until the investigation made necessary by the course of events first

revealed to the poor woman that she never had been his lawful wife. When he was at last tracked home, he was so shaken by terror at the prospect of long delayed retribution, that the premature debility that goes along with a sailor's life broke him down into a nervous collapse that was almost as pitiful as the distress of the respectable woman whom he had so long and so grossly deceived.

233. The case thus detailed at length was most satisfactory in the attainment of the object with which the effort began, and it was not the least of the sources of gratification in its review, that success had been attained in opposition to tactics that cannot be commended.

To state these things is happily to suggest a doubt as to the accuracy of the statements made, so far as the present practice removed from that of a time not very remote. Not that now we can entirely trust another to do our work as well as we should do it: that time is still far away, and probably will never come, but the day of mutual distrust and deception; the day of cheating because in some future transaction we shall get the worse end of the bargain, may fairly be said to be forever at an end. This result is almost wholly the effect of the more intimate personal relations that have followed the increasing facility for inexpensive travelling, and in this way have caused much business that was imperfectly done by letter, to be now completely done by personal interview. And while it would be absurd to say that there are not now and will not always be men who cheat because it is their nature to, it is also true that men who have met and discussed business differences in honorable and pleasant relations with each other, are much less likely to conceive such suspicions of each other as seem

to justify precautionary finesse, than those who have no personal acquaintance. When to these business associations is added the guarantee that comes with pleasant social and friendly conditions, as in the present Relief Association meetings, it may safely be said that the relations of the relieving officers toward the great questions which they are chosen to consider between them, and toward each other, were never so satisfactory as they now are. The benefit of this change has come as much to the worthy poor as to the interests of the different municipalities served, because all increase of knowledge, when modified by the compassion that experience gives, serves to clear the sight of those mists that imposture spreads, and thus to concentrate the effort for relief where it is most needed and most properly bestowed. From this convergence of rays of intelligence only the vicious and those who love darkness shrink, fearing to come to the light where they will be known.

234. Said a member of the Association to a stranger overseer who was reviewing his work with a strong appearance of expecting to come upon concealed facts: "You are not a member of the Association, are you?" "No, I live too far away." "Well, if you were, I think you would by this time have made up your mind to two things: that I am bright enough to know a poll-tax when I see it, and not mean enough to deny it when I have found it."

235. In chapter 84, section 14, we learn that in case of a person standing in need of immediate relief, the relieving town may collect from the town of settlement for proper expenses incurred in the three months before the date of the notice. This long time is given so that accident involving unconsciousness on the part of the person



aided, or delay made necessary by difficulty in finding the real place of settlement shall not prevent a just payment. There is no doubt that it does allow a careless or even unjust town agent to assume expenses that he would not incur for one of his own poor, which charges the town of settlement may pay rather than take the trouble and expense of a lawsuit to avoid, but, as said before, in the long run the provision is for the best. By the same section we learn that if the notifying and the alleged settlement town cannot agree as to the responsibility for the case, the former will have two years in which to enter suit, the time to be reckoned from the date of the notice, and if, on suit, the case is determined to belong to the defendant town, that verdict will forever bar litigation between these two on that point, as we learn by the next section.

#### ESTOPPEL BY VERDICT.

236. This provision, apparently so sweeping, is really very limited in its application. As appears in the case cited, *New Bedford v. Hingham*, 117 Mass. 445, it does not cut off the right of the defendant to a hearing on the question of the necessity for aid, nor on that of other legality of aid, nor does it in the least degree, imply that it may not raise its former or any later known defence against any other town than that with which the suit was had, with perhaps new evidence that will cause it to prevail. While this provision is intended to prevent interminable lawsuits between angry towns, it is easy to see that its effect is of doubtful value in an equitable point of view. One would say that it ought always to be possible and proper to correct the errors of the past, but in this case, if the blundering incapacity of a town officer of a past generation has allowed a case

to be improperly fastened upon his town, there is no escape for his successors in office, so long as the persons aided continue to live in the victorious town. If they move to another, the defendant may show the fact of non-settlement and get his verdict, but if they go back to the original town the year after, there would seem to be no doubt, if we follow the language of this section literally, that the defendant would again be held. This fact emphasizes in the strongest manner the weighty consequences of the acts of the constantly changing, often quite irresponsible officer of some of the smaller towns of the State. Chosen into the office of selectman, and having afterward put upon him the duties of an assessor, and overseer of the poor, he comes into office with no fitness for them, (for the discharge of which, in their variety and number, a college and then a professional education would be a fitting preliminary,) keeping no record of his cases, so that the reasons that induced him to concede the settlement of this person, by acts done by his ancestors fifty years ago, are now as absolutely lost as the cloud that vanished yesterday, it yet happens that if he, contesting points of law and fact with a trained city or State official, failed to make the right appear, this clause will, under the conditions named, make the effects of the error permanent so far as his town is concerned. Those who have followed the lives of the unhappy inmates of asylums for the insane and seen them live on, year after year, can calculate how much one such blunder may cost.

The last word to be said on this subject is: that no town can afford to keep a careless or incompetent man in charge of the investigation of this branch of the public service for a year, and none, however poor, can afford to allow one trained and efficient to go out of its service if

he can be made to stay. The main value of an experienced official in investigations of this kind, is in the prevention of mistaken or unjust claims, and as this does not show on the balance-sheets of his years of service, so none but one skilled and wise can know its full value.

#### WHAT ARE LAWFUL CHARGES?

237. Coming back now to section 14 it is necessary to consider for a short time what charges a town may lawfully assume, and collect, for as a rule it may collect of another any that it is legally obliged to pay. There is one old decision of the court that implies, without directly stating, that there are some charges, excessive in amount, which a town could not collect of another, even when itself held to pay. Perhaps if one town were maintaining a hospital in which the inhabitants of another could be cared for at a dollar a day, and thus be aided through expensive surgical accidents at a charge little greater than that of board alone, and if at the same time the town thus sharing the benefits of the provision, were called to provide for a person having a legal claim in the place having the hospital, itself having none, it might be held that the large charges for capital operations and subsequent skilled nursing for which it was legally held, could not be collected of the place maintaining the hospital, and the reason would be that one town has no equitable right to charge another more for a given service than that town would charge it for the same. If A. finds its advantage, for ten years, in getting along without a thing that B. steadily maintains and gives A. the benefit of meantime, and on the eleventh year needs the thing, for the benefit of a person settled in B., it has no business, apparently, on equitable ground, to make B. pay for its exceptional necessity.

## LAWFUL CHARGES.

238. But the general rule makes it the duty of each place to incur only such bills as it can legally collect, and these claims can be separated from all others by carefully reading section 27 of this chapter in connection with that now under consideration.

“Every city and town shall be held to pay any expense necessarily incurred for the relief of a pauper therein by any person not liable by law for his support, AFTER NOTICE AND REQUEST made to the overseers thereof, and until provision is made by them.” This is one of the most vital and least considered of the statutes of relief, and there is none in which the lines of official duty are more plainly marked. Note that the necessity is upon the town where the case lives, primarily, and not contingent on settlement, as the immigrant of yesterday is for this purpose on the same basis as a Mayflower descendant. Then see that it is only for expense necessarily incurred that either town is liable. If luxuries are provided, or necessities in excess, there is no legal claim for them.

## AID TO PARENTS AND CHILDREN.

239. Turning back to section 6 of this chapter we shall learn who are the persons who cannot legally call upon the town for aid to relatives, and shall perceive that claims of this kind go up and down, and not laterally. We might not, by the reading of the statute alone, infer what is set forth in *Brookfield v. Warren*, 128 Mass. 287, that a man cannot be made to support the children of his wife by a previous marriage, and is not pauperized by aid to them. “After notice and request” seems plain enough, and yet there is no provision that is more continually forgotten or ignored.

A man comes to the overseers and says that he cannot care for the woman whom he took from an employment bureau any longer, and that he will expect the town to pay for the nurse he has been obliged to keep for the last week, as well as for the bedding the patient has spoiled. A doctor comes and says that he is tired of waiting for the man who broke his leg down at the mill last month to hear from his friends in England, and shall hold the town if the man fails to pay. These claims are absolutely and entirely outside the law, which provides that there shall be no liability for any expense incurred before notice. The terms of this provision are so arbitrary and so hard that, if a doctor were called to reduce a dislocation or to attend a woman in labor, he could not collect for the service, unless he first notified the overseers of the claim, and made the equally necessary request that they should otherwise provide.

#### NOTICE AS A NECESSARY PRELIMINARY.

240. And the notice and request, though not necessarily in writing, must be an intelligible transference of the responsibility. A person may give notice for another, when requested by his principal to do so, but a notice by the agency of a landlord for a doctor, though authorized and accepted, would not imply a notice by himself, for himself, nor *vice versa*.

*Lamson v. Newburyport*, 14 Allen 30, before cited, furnishes a decisive comment upon the final clause, and shows that the provision made, which prevents future claim, is not necessarily removal, but only an offer of support, by the responsible officers.

It is not difficult to see how great would be the abuse of the public credit if it were not for the salutary check



involved in the provision that no claim shall arise until after notice and request, for it will be seen, by the persistency with which these claims are now urged, how resistless would be the effort, if all those landlords and other creditors of the poor could hold an alternative on the public treasury. It would be of little use for the town to provide a public almshouse and a town doctor, if it could legally be called upon to pay the accrued bills of the proper beneficiaries of these charities, months after they were contracted in the homes of the poor.

241. Section 16, "When a person is supported in a place other than that in which he has his settlement, the place liable for his support shall not be required to pay therefor more than at the rate of two dollars a week, if it causes the pauper to be removed within thirty days from the time of receiving legal notice that such aid has been furnished." It is interesting to notice that the sum that the aiding town would be obliged to accept as payment in full of all demands, was doubled in 1873, and even now the blank dismay with which a town that has legally spent one hundred dollars in four weeks, hears that it must be content with less than a tenth of that sum in payment, casts a strong light on the incapacity or mismanagement that made such a provision necessary. It will readily be seen that as a town can aid a case three months before a notice is necessary, the temptation to "get even" with some other place for some previous sharp practice would be pretty strong, and under such unchecked provocations, retaliated with each opportunity, it is easy to imagine the relief service between the towns degenerating into a mean warfare of culpable extravagance.

This remedy of removal for the purpose of coming

within the thirty days, is now never used except to gain the power to dictate an equitable settlement where there has been incompetent management or excessive charges, but it is proper to remark that an offer to remove is not a removal, and that the actual removal of the remains of the person on whose account the expense arose, is not a removal within the meaning of the act.

The most singular instance of its exercise was twenty-five years ago when a city was obliged, by the occurrence of a small-pox case, of a mild type, to go to an expense of six hundred dollars in isolation and sanitary precaution for this case alone. It chanced that the patient, ready for discharge at the end of the third week, was asked to take a convalescent's ride by a friend of the overseers of the town of settlement, and this friend carried him to a neighboring town and there, with his consent, left him. The aiding city seems to have accepted the removal as bringing its claim down to the statute allowance, but there is much question whether the steps necessarily taken by the board of health under the contagious diseases act, would not have given it a remedy against such sharp practice.

242. Section 29 embodies the law of denial, and the only change from the provision there enacted is in the fact that chapter 90, section 2 of Acts of 1891 shortens the time of legal denial from two months to one month. It will be noticed that this as well as the notice of settlement, is ordered to be made in writing and under the direction of the board of overseers, and the orders for removal whether out of the State in section 26, or to the town of settlement in section 28, are to be done on no less authority. In a case of voluntary removal of a person aided, by an overseer or an agent, the question of

power to remove cannot arise, but in a case where a person aided declines to remove to the place of settlement, it is the practice of some well-informed boards not to attempt the forcible removal on any less authority than the written order of the board directed to the removing agent and attested by the clerk of the board.

It will be noticed that in case the notified place neither denies nor moves in a month, the last clause empowers the notifying town to remove the case to the town of alleged settlement, and provides that by failure to deny, the town to which the case is removed shall be estopped in any action for such expense as has accrued, but not, as in case of suit, from right to deny in future, nor apparently from contesting that the expense was illegal or excessive in the case then pending. *Shelburne v. Buckland*, 124 Mass. 117, cites law of estoppel by failure to deny, while *W. Bridgewater v. Wareham*, 138 Mass. 305, shows that the denial must be in terms and not inferential.

243. Denials of cases that may at last be acknowledged are continually and properly made, when the time for the necessary investigation is too short. Here, again, the unwritten law of courtesy and fair-dealing has its illustration, for there is nothing in the statute or the legal form of notice or denial that makes any word of explanation necessary on either. The "objections to the removal" commanded in section 29 are contained in the formula "we are satisfied that this is not the place of settlement," and there is no legal objection to a man's being very unfair while still within his rights. But it is not to hinder and disoblige that the denial alluded to above is used, and a single line in the blank space to the effect that "Mrs. H. on whom we depend for evidence is

in Europe, and will not come back for three months," will be sufficient.

In *Carver v. Taunton*, 152 Mass. 484, a notice was sent, giving correct name of family but giving three children, not named, in place of five, the correct number. The notice was held to be defective by the court, on account of the error in numbering, which in case of removal might have involved the removal of persons not in the notice.

Having thus made a rapid sketch of the principal provisions of chapter 84, it is proposed, before closing with some comments upon chapter 145, relating to marriage, to mention briefly one or two collateral subjects, rather for the purpose of including in one place the more general rules with which we have to deal than because there is anything new to be said about them. The first is that statute which provides for the status of children born before marriage of parents who are afterward married. This will be found in Public Statutes, chapter 125, section 5. It will be noticed that it makes no provision for legal inquiry or authentication, and apparently leaves the decision to such ordinary proof and inference as take the place of legal process in daily affairs, namely, to reputed fact among acquaintances of verbal acknowledgment, and the existence of the family ties of affection that commonly accompany such relations. For a more extended comment on this subject the reader is referred to the paragraph on illegitimate children in division two.

244. Another provision, and to us a more interesting one, as having grown out of the case of the fugitive sailor's wife's second brood, (having been passed when it was believed he never would be found,) is that which gives the issue of a marriage done in good faith a settle-

ment through the parent capable of contracting marriage. It will be found in chapter 145, section 14, of the Public Statutes.

#### ADOPTION OF CHILDREN.

245. It now remains to say a few words on the statutes relating to the adoption of children, for among even the poorest of our dependents we find children who, we are told, have been adopted by those having them in charge. "How adopted?" is the question. The parents in their dying hour may have given them; the persons having them may have come under written obligation to protect and rear them, but none of these steps avail in a question of settlement. It is only the action of the Probate Court, perfect in statute form, that can give the rights that come with legal adoption. The conditions under which adoption may be effected, and the consequences that ensue upon its consummation are set forth in chapter 148 of the Public Statutes. By section 2 of that act it will appear that if the child to be adopted is more than fourteen years old its written consent is necessary, and that of its parents or of the survivor, or of the mother only if illegitimate, in all ordinary cases. But by section 3 the exceptions to this rule are very numerous and remarkable, and when considered in the light of the later decrees of the Supreme Court, on appeal, in which the principle is affirmed that the ultimate good of the child, and not the rights or even the affections of the parent, is the consideration that chiefly concerns the court, it must be plain that the difficulties in securing a decree are far from insuperable.

Section 6 provides that when all the necessary steps have been taken, the court shall make a decree by which except as regards succession of property, all rights and



other legal consequences including settlement, shall thenceforth exist. Section 7 provides that no person by adoption shall lose any right which he would otherwise have had, to inherit property from his natural parents.

246. Upon the making of a decree of adoption the status of the child is at once changed by the new relation, and he becomes at once, "for all purposes," the court says, as though he had been the born child of those who have adopted him. Even the effect of illegitimacy, which the statute says shall continue during the minority of the child, appears here to be suddenly terminated if the language of the court is to have its ordinary interpretation. A singular instance of the unexpected results of these provisions occurred a few years ago, which is worthy of record. A man sixty years old having a legal settlement in A. was deserted by his wife twenty years ago, and she is still away, her whereabouts unknown. He went to C. ten years ago, and hired a house-keeper there, thirty years old, who had lived single in C. more than six years, and had a settlement there. One year after he took the woman to A. she bore him a child, and the woman and child continued to live with him in A. until four years ago, when the mother died, having lived in A. more than five years without aid, and gained a settlement there, which the illegitimate child could not take, because that was not the place of her settlement "at the time of its birth." So when a year after the death of the mother, the child was placed out to board, the expense came on C., where she was settled "at the time of its birth." That town taking steps to move the little one to a public institution, the father got a decree of adoption from the court, and the settlement then changed to A.

But the phrase "in all respects as though the child of the adoptive parents," has one possible result which may not have been foreseen. That is in a case, not at all unreasonable or far-fetched, where a settled child should be adopted by unsettled parents. Would such a child thereupon be unsettled? If not, it does not become "in all respects" as though born to the adopting parents. And if it does so lose its settlement, what shall we say of the application of the inclusive clause in chapter 83, which provides that the only way by which a settlement once gained can be lost, is by the gaining of another?

#### MARRIAGE.

247. Although the condition of marriage and the results arising from it do more commonly engage the attention of the investigator than any other one subject, it is not proposed, for the reason that there is little that is new in the last thirty years, either in statute or decision, to consider the successive sections of the marriage law in the same manner that the settlement law was reviewed. In place of that course, which would involve repetition of what is better stated in other books, it will be more for the benefit of the beginner, for whom primarily this work is undertaken, to state in general terms what are the applications of existing law to the questions that are the most likely to arise, and even when there is no citation of the very language of the statute, the reader may feel reasonably certain that he can find the principle in the body of the statute law. This statement will include several propositions that were considered in the comments upon the first clause in the settlement law, and it may be well for the beginner to glance at what is there said in connection with what follows, for he may find, even in

repetition, that some of the propositions are advanced, with new surroundings, in a way to cast more light upon this very important branch of our investigation.

248. Marriage is often spoken of as a contract, and it is that, and also more than that; in this among other things, that whereas in most contracts the failure of one party absolves the other, there is no such absolution here, because the relation touches at once collateral interests other than those of the contractors, and thus one contractor is still held, for certain results though it becomes certain that there never was a legal contract.

When one reads the mandatory provisions of the different clauses of chapter 145, and notices the penalties that follow a violation of the rules, he naturally infers that all these processes thus guarded are essential parts of the transaction, and that the severity of the provisions is made so great because it is necessary to prevent the failure of the business altogether.

By section 6 a magistrate or minister is forbidden to marry persons severally under twenty-one and eighteen years old.

By section 14, when a marriage is void by reason of previous marriage, the fact is ascertained by a process that results in a written decree.

By section 16 the filing of a previous notice of intention of marriage is necessary.

By section 18 the clerk recording the intention and issuing the permit is saddled with a penalty, if the persons receiving it are under age.

Section 22 provides that the marriage shall be solemnized either in the town of residence of the parties or of the minister.

Section 26 promises fine and jail to him who shall

falsely pretend to have authority to join people in marriage.

From some analogies in the law one would infer that a violation of any one of these provisions might invalidate the whole transaction.

249. So far is this from being true that it is no exaggeration to say that a wilful transgression of nearly every one of them, by either the man or woman proposing to marry, without conspiracy with the other, will not affect the validity of the marriage in the least degree, for some of the legal effects of marriage settlement especially. This will appear from the 27th section which provides that if a person, in violation of the previous section, having no power to join people in marriage, assumes to do so, the marriage will not be invalidated by that fact, if either or both believe he has the right.

If a boy of eighteen years old, with purpose to betray a girl of seventeen, goes to a town-clerk, and by lying about their ages gets him to give them a permit, then telling her that a friend in the next town is a justice who can marry them, and the friend assumes to do so, she believing it is all right, there is not one step in the transaction that is not in violation of the statute provisions, and yet it is confidently believed that this is such a marriage, supposing neither to have been married before, as would change a settlement.

Some visitors, deceived by provisions defining duties and denouncing penalties, as, for instance, in the case of minors who marry without consent of guardians, jump at once to the conclusion that because the act was illegal, it was void, than which there is no greater mistake. In the case above, the law will punish the fraudulent boy, and the bogus magistrate, and subject the careless clerk to a fine,

but the act remains, for the sake of the one innocent person, as effective and permanent as though there had been no fraud.

## DIVORCE.

250. It might not be quite unprofitable for us to spend some time on the law of divorce, as that is a subject which with our calling makes us only too conversant, but the subject is too complex for satisfactory treatment here. Suffice it to say that a divorce valid in this State terminates the settlement rights of the wife by the husband, as though he had then died, and while nothing that he gains or perfects after that date can affect her, nothing that he has then gained is lost by divorce. His children, however, will continue to gain by him, as though no separation had taken place. If a husband were so near gaining that he had no settlement when the preliminary decree was issued, and gained before the final decree came, the wife would have the benefit of that, for the first step is conditional, a decree nisi, and the state between that and the final decree is not settled, but liable to change by new evidence or by change of purpose.

Again, the two years after which the defendant in the suit may again marry, dates from the final and not from the conditional decree. In divorces that took place forty years ago when the defendant could marry again only by leave of the court, recorded, it will be well to look, in case of remarriage, for evidence of permission.

## CONCLUSION.

The new century which in a little more than a year will open upon us, will find the charities of Massachusetts occupying their full share in the minds and hearts of



the benevolent people everywhere. Never before has there been such purpose associated with such power of accomplishment. Race and theological antipathies and prejudices constantly exercise less and less power, in spite of the narrow minds that would strengthen and perpetuate them, and now men of differing birth and faith co-operate in the noble work of relieving the misery around them, with entire confidence in the good faith of each other. The Puritan Yankee learns that the best men in all the races which have taken shelter in his home are much better than the worst of his own people, and the others, divesting themselves of the suspicion that isolation makes possible, have learned that prudence and thrift are not enemies to large-hearted sympathy, but rather the means by which it finds its most practical expression.

He who becomes the agent of the forces that thus meet on neutral ground, dedicated to good works, should be prepared to act upon the principle that he can do the most good in his calling by sinking his prejudices, and freely availing himself of all the influences that will help on the cause for which he labors. He may be sure that a word from one influential person of the race of the applicant will help him more in a minute than all he himself can do in a long time. And when he sees how cheerfully and helpfully the assistance is given, the experience will be beneficial to him as a man and as an officer.

It is one of the advantages that come to the faithful visitor, whether as overseer or employee, that the unselfishness of his mission opens all doors to him. None is too busy or self-absorbed to lend him a helping hand, and in the proper exercise of his office he may feel a part of

the joy of one who gives from his own store, or of the patriarch who knew that blessing followed his coming: that he was a friend to the poor and needy, and one who searched out the cause that he knew not. That this book should in any degree advance the cause of true philanthropy in our proud State is the dearest wish of the compiler, and if it should seem to the reader ill-arranged, or disconnected or obscure in parts, the justice of all these criticisms will be freely admitted if only there shall appear running through every page the golden thread of purpose to unite all men in an effort to serve the interests of the poor and of those who have none to help.

194 BRADSTREET AVENUE, BEACHMONT,  
Nov. 10, 1899.



## APPENDIX.

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### ATTORNEY GENERAL'S OPINIONS.

#### DOMICIL OF MARRIED WOMEN.

FEBRUARY 2, 1899.

S. C. WRIGHTINGTON, Esq., Superintendent, State Adult Poor,  
Boston, Mass.

*Dear Sir,* Your letter of December 3d, 1898, states two cases, which in my opinion are governed by the same general considerations.

I. One who is now a pauper came with his mother to this Commonwealth and to Worcester in 1874. He has acquired no settlement in his own right. None of his ancestors ever lived in Massachusetts except his mother. His father and mother last lived together in the State of New York, in the town of Champlain, where he was born. His father there deserted his family and removed to Michigan, where he lived until his death in 1896. His mother, after her husband's desertion, came to Worcester, where she resided, without receiving public aid, from 1874 to 1889.

The question submitted by your letter is, whether the mother of the pauper acquired a settlement by her residence in Worcester which descended to her son. The settlement of the mother is claimed under the provisions of Sts. 1874, c. 274, amended by Sts. 1879, c. 242, providing that married women who have not a settlement derived by marriage, who reside in any place within the state for five years, shall thereby gain a settlement in such place.

In *Stoughton v. Cambridge*, 165 Mass. 251, it was held that a settlement was gained by a married woman in the defendant city because her husband's domicile was there for a period of more than five years, although her own domicile, excepting so far as it was that of her husband, did not remain constant, the court (Soule, J.) saying, "It still remains the law of Massachusetts that ordinarily a married woman's domicile is that of her husband."

I do not think, however, that the doctrine of *Stoughton v. Cambridge* is applicable to the present case. The husband had no domicile in Massachusetts, and never had. He had deserted his wife in New York, and removed to another state. After the desertion, she had come to Massachusetts, and there resided. In my opinion, the legal fiction that wherever a wife may be actually, she is constructively with her husband, does not apply to this case. Many excep-

tions have grown up to the ancient doctrine. At the present day, the law recognizes the wife as having a separate existence and separate rights and separate interests; the ancient unity is severed, so that the wife stands upon an equal footing with her husband as to property, torts, contracts and civil rights. He now has no more control over her than she over him, and there seems to be no reason why she may not acquire a separate residence when she resides within and her husband without the state, and especially when he has forfeited his marital rights by his misconduct. To fix inevitably her residence with her husband would subvert her statutory right of voting and holding office, and would compel an innocent wife to make her home in whatever voting precinct her offending husband might choose to live. *Cheever v. Wilson*, 9 Wall. 108, 124. *Shute v. Sargent*, 36 Atlantic Rep. 282. *Burtis v. Burtis*, 161 Mass. 508. See also *Thorn-dike v. Boston*, 1 Met. 245.

Without attempting to establish any general rule applicable to all cases, I am clearly of the opinion that, upon the case stated, the mother of the pauper, by her residence in Worcester, gained a settlement there, notwithstanding the residence of her deserting husband in Michigan.

II. The second case stated in your letter illustrates still more forcibly the absurdity of the proposition that for purposes of settlement the wife's domicile is to be construed in all cases as that of her husband.

The pauper in this case came to this country in February, 1895, being then about two years of age. His father, a native of Ireland, lived in Springfield, Massachusetts, from 1892 to 1898, but without acquiring a settlement. His mother first came to this country, to Springfield, in 1895, where she resided for three years without receiving aid. By tacking on to her actual residence two years of constructive residence, while her husband was living here and before she ever saw this country, it is contended that she had resided in Massachusetts for five years. I do not think the statute can be construed to cover such a case nor that the doctrine of *Stoughton v. Cambridge* applies to it.

Very truly yours,

HOSEA M. KNOWLTON,

*Attorney General.*

#### CONSTRUCTION OF THE 1898 AMENDMENTS.

FEBRUARY 7, 1899.

STEPHEN C. WRIGHTINGTON, Esq., Superintendent, State Adult Poor, Board of Charity, State House.

*Dear Sir,*—Your letter of December 8th requests my opinion upon the construction of Sts. 1898, c. 425, § 5. Your letter states that other sections of the same act have unsettled many persons now supported in almshouses in the towns in which they were formerly settled, and that in some cases the town authorities of said town claim that they have a right to charge for the support of such paupers, under the provisions of the section in question.



The section was passed in substitution of Pub. Sts. c. 84, § 18. It is apparent from the reading of both the section under consideration and that for which it was a substitute, that the purpose of the Legislature was to provide aid for the unsettled temporarily poor and indigent in their own homes, and thus to prevent the sundering of family ties which must have occurred had no such provision been enacted. Neither the former nor the present act is intended to include persons whom the poor law authorities are maintaining in their almshouses, as by their removal thereto, the overseers are deemed already to have decided that the almshouse and not their homes was the proper place for them to receive public aid.

Very truly yours,

HOSEA M. KNOWLTON,

*Attorney General.*

CONSTRUCTION OF 1898 AMENDMENTS ON THE QUESTION AS  
TO THE ACTS TO BE DONE AFTER MAY, 1860.

MARCH 4, 1899.

S. C. WRIGHTINGTON, Superintendent, State Board of Charity,  
Boston, Mass.

*Dear Sir,*—Your letter of the 28th ult. requires my opinion upon the settlement of a certain person named therein, the facts being as follows. He was born in Boston in 1829 and has always resided in Boston. He derived a settlement in Boston from his father, who died in Boston in 1876 at the age of 79 years. His mother died in Boston at the age of 87 years. There was a period of five years between 1872 and 1877 during which it is admitted that the person in question resided in Boston five full years without receiving public aid and paid the necessary number of taxes to give him a settlement under the retroactive clause of St. 1874, c. 274.

The statute last quoted (St. 1874, c. 274) after prescribing certain conditions of settlement provides in section 3 that "No existing settlement shall be changed by any provision of this act unless the entire residence and taxation herein required accrues after its passage; but any unsettled person shall be deemed to have gained a settlement upon the completion of the residence and taxation herein required, though the whole or a part of the same accrues before the passage of this act." Under this statute the person in question could gain no settlement inasmuch as he already had a settlement derived from his father and acquired prior to 1860. His derivative settlement from his father prevented him from acquiring a settlement in his own right. *Salem v. Ipswich*, 10 Cush. 517-520.

St. of 1898, c. 425 defeats all settlements not fully acquired subsequent to May 1, 1860, "except where the existence of such settlement prevented a subsequent acquisition of settlement in the same place." The settlement of the person in question acquired before 1860 prevented the subsequent acquisition by him of a settlement in the same place. The case, therefore, is within the exception of the statute and the original settlement stands.

This conclusion is confirmed in the case of *Adams v. Ipswich*, 116 Mass. 570, in which the Court (Wells J.) says, "If the older settlement prevented the subsequent acquisition of the more recent one, the former is preserved by the exception in the St. of 1870." The exception referred to in the opinion of the Court is similar in its terms to that of the St. of 1898.

Yours very truly,

HOSEA M. KNOWLTON,

*Attorney General.*

#### LOSS OF SETTLEMENT UNDER 1898 AMENDMENT.

BOSTON, July 26, 1899.

S. C. WRIGHTINGTON, Esq., Superintendent, State Adult Poor, Boston, Mass.

*Dear Sir,*—Upon the facts stated in your letter of July 8th, the pauper named therein has no settlement in Lawrence or in Lynn; and unless, upon other facts, she has gained a settlement elsewhere, she is undoubtedly a state charge.

Her father acquired a settlement in Lawrence prior to 1859, and she took a settlement from him by derivation. The settlement, however, was defeated by Sts. 1898, c 425, § 2, providing that "All settlements not fully acquired subsequent to the first day of May eighteen hundred and sixty, are hereby defeated and declared to be lost."

Her father did not lose his settlement in Massachusetts by removing to Michigan. *Townsend v. Billerica*, 10 Mass. 411, 413. *Canton v. Bentley*, 11 Mass. 441. Sts. 1898, c. 425, § 2, provides that "All persons absent from the Commonwealth of Massachusetts for ten years in succession shall lose their settlement." This statute, however, is new and is not retroactive.

Inasmuch as her father did not lose his settlement in Lawrence, she could not derive a settlement from her mother in Lynn. Children can only follow the settlement of their mother when the father has no settlement within the Commonwealth. (Pub. Sts., c. 83, § 1, cl. 2.)

She could not acquire a settlement in Lynn by her residence there with her mother for fifteen years, because she was and is *non compos mentis*.

Upon the facts as stated in your letter, therefore, she is an unsettled person and a charge upon the Commonwealth.

Yours very truly.

HOSEA M. KNOWLTON,

*Attorney General.*

## LATEST OPINION ON WOMAN SETTLEMENT.

COMMONWEALTH OF MASSACHUSETTS,

OFFICE OF THE ATTORNEY-GENERAL,

BOSTON, Sept. 20, 1899.

S. C. WRIGHTINGTON, Esq., Superintendent of State Adult Poor.

*Dear Sir,*—Your letter of Sept. 1st requires the opinion of the attorney-general, upon facts stated in the letter, as to the settlement of a certain pauper.

Your letter states that he was born in Boston, Dec. 23, 1855, and consequently became of age Dec. 23, 1876. He never acquired a settlement in his own right. His father was born in New Hampshire, and came to Boston in 1852, where he died Jan. 28, 1874, never having acquired a settlement in Massachusetts. His mother came to Boston with her husband in 1852, and resided in that city continuously as a married woman until her husband's death in January, 1874, and subsequently as a widow, in the same place, until her death in April, 1889.

Upon the facts stated, the mother of the pauper was undoubtedly settled in Boston. If this settlement was acquired prior to 1876, when the pauper became of age, he would take the same settlement by derivation from her. If, however, she did not acquire her settlement in Boston until after 1876, he would derive no right therefrom. It is well settled that only minors can gain a derivative settlement from their parents. *Springfield v. Wilbraham*, 4 Mass. 493. The answer to your inquiry depends, therefore, upon the determination of the question when the mother acquired her settlement in Boston.

Stats. 1874, c. 274, s. 2, provides that "Any woman of the age of twenty-one years who resides in any place within this state for five years together, without receiving relief as a pauper, shall thereby gain a settlement in such place." By the third section of the same act, it is provided that "Any unsettled person shall be deemed to have gained a settlement upon the completion of the residence and taxation herein required, though the whole or a part of the same accrues before the passage of this act." It has been held that this statute, though general in its terms, only applied to unmarried women. *Somerville v. Boston*, 120 Mass. 574. Under this statute, therefore, the mother of the pauper would not have begun to acquire a settlement until the death of her husband in 1874; but, having resided as a widow in Boston from that time until her death in 1889, she would have acquired, in January, 1879, under its provisions, a settlement in Boston, having then completed her five years' period of residence therein as an unmarried woman. But, in consequence, doubtless, of the decision in *Somerville v. Boston*, above referred to, limiting the operation of the statute of 1874 to unmarried women, a statute was enacted in 1879 (Stats. 1879, c. 242) providing that the provisions of Stats. 1878, c. 190, s. 1, c. 6 (which was a re-enactment of Stats. 1874, c. 274, s. 2, above quoted) should extend to married

women; and, by sect. 2, making its provisions retroactive as to unsettled women. The word "unsettled" in this section means unsettled at the time when the act took effect. *Worcester v. Great Barrington*, 140 Mass. 243. *Middleborough v. Plympton*, 140 Mass. 325.

If, therefore, the mother of the pauper was an unsettled woman when the statute of 1879 took effect, she would, under that statute, be deemed to have acquired a settlement in Boston when she had lived with her husband in Boston for five years, or in 1857. At that time her son, the pauper in question, was a minor, and would, consequently, have a settlement in Boston by derivation from his mother.

But the mother was not an unsettled woman when the statute of 1879 took effect. It was enacted April 22, 1879, and became law May 22 of the same year. The five years' residence as a widow which settled her in Boston under the provisions of the statute of 1874, expired in January, 1879. She therefore gained a settlement in January, 1879, which was not affected by the retroactive provisions of the statute of that year. It follows that when the pauper, her son, became of age in 1876, his mother cannot be said to have been settled in Massachusetts, and he derives no settlement from her.

It has been suggested that inasmuch as the statute of 1879 is in amendment of the provisions of the statute of 1878, the later statute is to be taken as incorporated into and made a part of the provisions of the statute of 1878, so far as to be a part of the same statute; and that, consequently, rights under the statute of 1878, as amended by the statute of 1879, would be acquired as of the date of the passage of the statute of 1878. There is nothing in this contention worthy of serious consideration. Sect. 2 of the statute of 1879 is not an amendment of the statute of 1878 in the sense that it re-enacts the section amended, merely adding new words to the language of the former section. It is an independent enactment, containing new provisions; and those provisions cannot be law until they are enacted. "Generally, a statute speaks from the time it takes effect." Morton, C. J., in *Worcester v. Great Barrington*, *ubi supra*, 243-245. A statute affecting settlement laws may be retroactive in its provisions, but it cannot be taken to be retroactive as to the time when it takes effect.

Yours very truly,

(Signed) HOSEA M. KNOWLTON,  
*Attorney General.*

## MILITARY AND STATE AID LAWS.

CHAPTERS 372 AND 374, ACTS OF 1899.

[CHAPTER 372.]

*An Act Relative to Military Aid.**Be it enacted, etc., as follows :*

SECTION 1. Any city or town may raise money and, under the direction of its mayor and aldermen or selectmen, may, under the following conditions, pay part thereof as military aid to, or expend it for, any worthy person who shall have the qualifications of the first class of persons described in section two, or of the second class described in section three, or of the third class described in section four, or of the fourth class described in section five of this act.

SECTION 2. Each person of the first class shall be qualified as follows:—

First. He shall have his settlement under the pauper laws in the city or town aiding him.

Second. He shall have served as a soldier, sailor, marine or commissioned officer in the army or navy of the United States to the credit of this Commonwealth, either in the civil war between the nineteenth day of April in the year eighteen hundred and sixty-one and the first day of September in the year eighteen hundred and sixty-five, or in the war with Spain, which for the purposes of this act is defined as having begun on the fifteenth day of February and ended on the twelfth day of August in the year eighteen hundred and ninety-eight. Or he shall have served in such army or navy to the credit of any other state, between the nineteenth day of April in the year eighteen hundred and sixty-one and the eighteenth day of March in the year eighteen hundred and sixty-two, having been a resident of this Commonwealth, actually living therein at the time of his enlistment; or in such army or navy in one of the volunteer military organizations of this Commonwealth known as three months' men, ninety days' men, or one hundred days' men, mustered into the United States service in April, May, June or July in the year eighteen hundred and sixty-one, or in April, May, July or August in the year eighteen hundred and sixty-four; or he shall have served in such army or navy, having been mustered into the service of the United States, at some time between the first day of May and the first day of October in the year eighteen hundred and sixty-two, while having a residence and actually living in this Commonwealth, and while being a member of one of the military organizations of the Massachusetts volunteer militia known as the Boston cadets, the Salem cadets, the eighth battery of light artillery, or company B of the seventh regiment of infantry; or he shall have served in such navy, being one of the persons since included in the list of officers, sailors and marines prepared by the adjutant general in accordance with chapter fifteen of the resolves of



the year eighteen hundred and seventy-five and chapter eight of the resolves of the year eighteen hundred and eighty, and having been appointed or mustered into and served in such naval service of the United States while an actual resident of this Commonwealth; or who served in the regular army of the United States in the civil war, or in the regular army or navy of the United States in the war with Spain, having been appointed or enlisted therein while a citizen of this Commonwealth, having a residence and actually residing therein.

Third. He shall have been honorably discharged from such United States service and from all appointments and enlistments therein.

Fourth. He shall be a poor and indigent person, standing in need of relief by reason of sickness or other physical disability, who would otherwise be entitled to relief under the pauper laws.

Fifth. He shall not be, directly or indirectly, in the receipt of any other state or military aid, or any pension for services or disabilities incurred in either of said wars.

Sixth. He shall not be entitled, under the laws of the United States or under the rules governing such institutions, to admission to any national soldiers' or sailors' home, and his disability must have arisen from causes independent of his service aforesaid, except in cases of applicants for pensions, while their applications are pending, as to which the mayor and aldermen or selectmen are convinced upon evidence, first reported to the commissioners of state aid and satisfactory to them, that justice and necessity require such aid to prevent actual suffering, and in case of such unmarried applicants that they cannot obtain assistance at a national soldiers' or sailors' home.

SECTION 3. Each person of the second class shall have his settlement under the pauper laws in the city or town aiding him, and be further qualified as follows:—He shall be an invalid pensioner and entitled to receive state aid under the provisions of chapter three hundred and one of the acts of the year eighteen hundred and ninety-four or of any act of the current year passed in continuance of the whole or of a part thereof, whose pension and state aid shall be inadequate for his relief, and who would otherwise receive relief under the pauper laws; but while actually aided under such chapter he shall not receive aid under this act.

SECTION 4. Each person of the third class shall have all the qualifications required to enable a person to receive aid in the first class, except settlement under the pauper laws; but in lieu of such settlement he shall be an actual resident of the city or town aiding him, and his residence in this Commonwealth shall have been continuous during the three years last preceding his receipt of aid under this chapter.

SECTION 5. Each person of the fourth class shall have all the qualifications required to enable a person to receive aid in the second class, except settlement under the pauper laws; but in lieu of such settlement he shall be an actual resident of the city or town aiding him, and his residence in this Commonwealth shall have been continuous during the three years last preceding his receipt of aid under this chapter.

SECTION 6. No city or town shall render aid under this act to

any person of the third or fourth class without first obtaining from the commissioners of state aid, after furnishing them with such evidence as they may require that the person to receive aid is entitled thereto as may be ordered by the commissioners, an order fixing the maximum amount per month within which payments may be made, and the period during which aid may be allowed, and stating such other conditions as they may impose relative to such aid; which order may be revoked or modified by such commissioners by giving written notice to the city or town procuring it.

SECTION 7. Aid given under this act shall be entitled "Military Aid," and no person shall receive it who receives state aid. No person shall be compelled to receive military aid. No person shall receive military aid on account of his service in the war with Spain unless he was enlisted or appointed in the service of the United States aforesaid after the fourteenth day of February and prior to the twelfth day of August in the year eighteen hundred and ninety-eight: *provided, however,* that military aid may be allowed under the limitations of this act to or for volunteers mustered into the service of the United States in Massachusetts regiments after said twelfth day of August but prior to the first day of January in the year eighteen hundred and ninety-nine, who shall otherwise be qualified to receive the same under the terms of this act. No person shall receive military aid who deserted from such service in either of said wars. No person shall be eligible to receive military aid as a worthy person who shall have been dishonorably discharged from any national soldiers' or sailors' home or from the soldiers' home in Massachusetts, unless the commissioners of state aid, after a hearing, shall decide otherwise. No military aid shall be paid to or for any person whose necessity therefor is caused by voluntary idleness, or who is known to be in the practice of vicious or intemperate habits.

SECTION 8. Any person applying for military aid may be required by the mayor and aldermen or the selectmen granting him the same, or by the commissioners of state aid, as a condition of granting military aid, to pay over his pension to said mayor and aldermen or selectmen, to be expended for his relief, before he shall receive such aid.

No person shall be compelled to receive the relief or support furnished under this act in any almshouse or public institution, unless his physical or mental condition requires it, but he may so receive it if he chooses so to do; and, except in such cases, it shall be paid to, or expended for, those persons only who live separately from persons receiving support as paupers. All military aid shall be applied solely for the benefit of the person for whom it is intended and no greater sum shall be paid to or for any person under this act than shall be necessary to furnish him reasonable relief or support; and no sum shall be paid to or for any person competent to support himself, or in receipt of income or in ownership of property sufficient for his own support, nor to or for any person more than is necessary, in addition to his income and property, for his personal relief or support. Municipal authorities granting aid under this act shall from time to time

after its original allowance make such investigation into the necessities of the person aided and the facts of his case, and any change thereof, as to preclude any payment of aid contrary to the terms of this act.

SECTION 9. The auditor of the Commonwealth, the adjutant general, and some competent third person appointed by the governor and council, with a salary to be fixed by them, not exceeding twenty-five hundred dollars per annum, who shall devote his whole time to the duties of his office and who shall be the secretary of the board, shall be a board of commissioners of state aid, and shall perform the duties required of such commissioners under the laws relating to state and military aid. Said commissioners shall investigate all payments of money under such laws, so far as the interests of the Commonwealth may require. Said commissioners, with the approval of the governor, may appoint, as occasion may require, one or more disinterested persons, whose duty it shall be to investigate any claim or claims made against the Commonwealth for reimbursement, who may examine any persons receiving relief under this act and investigate the reasons therefor, and all matters relating to the granting of such relief, and who shall report their doings to said commissioners. The reasonable expenses of the commissioners and the expenses and compensation of such disinterested person or persons, approved by said commissioners and allowed by the governor and council, shall be paid from the treasury of the Commonwealth.

SECTION 10. When any sum shall have been expended under and according to this act the full amount so expended, the names of the persons receiving the same, and the names of the companies and regiments or vessels, if any, in which they respectively enlisted, and in which they last served, the sums received by each, and the reasons for the expenditure in each case, with such other details as the commissioners of state aid may require, shall be certified under oath to said commissioners, in a manner approved by them, by the mayor, treasurer and city clerk of any city, or by a majority of the selectmen of any town disbursing the same, within ten days after the first day of the month next after the expenditure is made; and the commissioners of state aid shall examine the certificates so made and shall allow and indorse upon the same such sums as in their judgment have been paid and reported according to this act, and thereupon file the same with the auditor. In the allowance of said commissioners they may consider and decide upon the necessity of the amount paid in each case, and they may allow any portion thereof which they may deem proper and lawful, and which, in cases of payment to or for persons of the third or fourth class, they shall also find to have been made according to their orders. Of the sums so allowed and indorsed by the commissioners one half and no more of all payments made to or for persons of the first and second classes, and the whole of all payments made to or for persons of the third and fourth classes, shall be reimbursed by the Commonwealth to the town or city expending the same, on or before the first day of December in the next year after the year in which the same have been paid, but none of the expenses attending the payment of military aid shall be reimbursed.

SECTION 11. Chapter two hundred and seventy-nine of the acts of the year eighteen hundred and ninety-four, entitled "An Act relative to military aid," is hereby repealed; but the provisions of this act shall be construed, so far as they are the same as those of existing laws, as a continuation thereof. All special acts and resolves authorizing the payment of military aid to individuals under said chapter, which by the terms of said chapter would expire on the first day of January in the year nineteen hundred, shall be continued in force, so far as they relate to the payment of military aid, and such aid may be paid under them according to the terms of this act, until the first day of January in the year nineteen hundred and five and no longer: *provided*, that no such special act or resolve shall be so continued in force, nor shall aid be paid by reason of the same if it would otherwise expire by the limitation of its own provisions.

SECTION 12. The provisions of this act shall, unless sooner repealed, continue in force until the first day of January in the year nineteen hundred and five and no longer, except such provisions as relate to settlement of accounts for payment of aid rendered by cities or towns previous to said date, and to the reimbursement thereof, which provisions shall continue in force one year only after said date. But the expiration of this act shall not be held to revive any act or resolve or any part thereof repealed by this act. No special act or resolve now in force or hereafter passed granting military aid to persons therein named, payable under this act, shall continue in force after the date first named in this section, unless otherwise expressly provided.

SECTION 13. The soldiers' relief commissioner of the city of Boston shall, subject to the direction of the board of aldermen of said city as to the amount to be paid to beneficiaries, have and exercise all the powers and duties hereinbefore vested in the mayor and aldermen of said city.

SECTION 14. This act shall take effect on the first day of July in the year eighteen hundred and ninety-nine.

Approved May 18, 1899.

[CHAPTER 374.]

*An Act Relative to State Aid.*

*Be it enacted, etc., as follows :*

SECTION 1. Any city or town may raise money for the purposes of this act; and the treasurer thereof may, under the direction of the mayor and aldermen or the selectmen, under the following conditions, pay state aid to or expend it for any worthy person having a residence and actually residing in such city or town, who is not receiving aid from any other state nor from any other city or town in this state, and who shall be in such necessitous circumstances as to require further public assistance, and who shall belong to either of the following classes, to wit:—

First class. Invalid pensioners of the United States who served



in the army or navy of the United States to the credit of the state of Massachusetts, either in the civil war, between the nineteenth day of April in the year eighteen hundred and sixty-one and the first day of September in the year eighteen hundred and sixty-five, or in the war with Spain, which for the purposes of this act is defined as having begun on the fifteenth day of February in the year eighteen hundred and ninety-eight and ended, except when otherwise herein specially limited, on the twelfth day of August in the year eighteen hundred and ninety-eight, or who served in such army or navy in the military organizations of this state known as three months' men, ninety days' men, or one hundred days' men, mustered into the United States service in April, May, June or July in the year eighteen hundred and sixty-one, or in April, May, July or August in the year eighteen hundred and sixty-four;—or who, having their residence and actually residing in this state at the time of their enlistment, served to the credit of any other state in such army or navy between the nineteenth day of April in the year eighteen hundred and sixty-one and the eighteenth day of March in the year eighteen hundred and sixty-two; or who served in such army or navy, having been mustered into the service of the United States, at some time between the first day of May and the first day of October in the year eighteen hundred and sixty-two, while having a residence and actually living in this Commonwealth, and while being a member of one of the military organizations of the Massachusetts volunteer militia known as the Boston cadets, the Salem cadets, the eighth battery of light artillery, or Company B of the seventh regiment of infantry; or who served in such navy, being one of the persons since included in the list of officers, sailors and marines, prepared by the adjutant general in accordance with the provisions of chapter fifteen of the resolves of the year eighteen hundred and seventy-five and chapter eight of the resolves of the year eighteen hundred and eighty, having been appointed or mustered into and served in such naval service of the United States while an actual resident of this Commonwealth; or who served in the regular army of the United States, either in the civil war or in the war with Spain, having been appointed or having enlisted in said army while a citizen of this Commonwealth, having a residence and actually residing therein; which pensioners have been honorably discharged from their said service in the army or navy, and from all appointments and enlistments therein, and are so far disabled by such service as to prevent them from following their ordinary occupations.

Second class. Dependent relatives of soldiers or sailors who have served in the manner and under the limitations described for the service of invalid pensioners of the first class, who, if not continuing in the service of the United States awaiting discharge upon the official proclamation ending the war with Spain, or if not having died in the service above defined for invalid pensioners, have been honorably discharged therefrom, as follows:—Namely, the wives and widowed mothers of invalid pensioners of the first class whose service was in the civil war, and the widows and widowed mothers of soldiers or sailors dying in such service, or dying after their honorable dis-



charge therefrom, and the widows, children and widowed mothers of soldiers or sailors who served in the war with Spain, dying in such service at any time previous to the date when said official proclamation was issued, or dying after their honorable discharge therefrom of wounds or disease incurred in such service, or dying while in receipt of a pension of the United States and the state aid of this state, and the wives, children and widowed mothers of invalid pensioners of the first class who served in the war with Spain, and of soldiers or sailors while remaining in the service of the United States in said war, but not later than three months after the issue of said proclamation: which children shall not be more than fourteen years of age, and shall have been born prior to their father's discharge from such service and prior to the date of issue of said proclamation.

Third class. Dependent relatives of soldiers or sailors who served in either of said wars, in the manner and under the limitations described for the service of invalid pensioners of the first class, who appear on the rolls of their respective regiments or companies in the office of the adjutant general to be missing or to have been captured by the enemy, and who have not been exchanged and have not returned from captivity, and whom the authorities granting aid have no good reason to believe to be alive, as follows:—Namely, the widows or wives and widowed mothers of such soldiers and sailors and the children of such soldiers and sailors who would be entitled to receive aid in the second class if their fathers were invalid pensioners of the first class because of service in the war with Spain.

Fourth class. Persons who were receiving state aid as dependent fathers or mothers prior to the eleventh day of April in the year eighteen hundred and sixty-seven and were precluded therefrom by the provisions of chapter one hundred and thirty-six of the acts of the year eighteen hundred and sixty-seven; also the fathers or mothers, the fathers being living, of soldiers or sailors who served in the war with Spain, in the manner and under the limitations described for the service of invalid pensioners of the first class, while they are in such service, or if they have died in such service, but no aid shall be granted to any such fathers or mothers after the expiration of three months from the time of the issue of said proclamation of peace, except to such parents of sons who died in the service as are receiving aid at the time of the passage of this act.

No aid shall be granted to persons of this class first above named, nor, after the expiration of three months from the issue of such proclamation, to any others of this class, unless in each case the mayor and aldermen or selectmen shall be satisfied, on evidence first reported to the commissioners of state aid, and satisfactory to them, that justice and necessity require a continuance of the aid to prevent actual suffering.

SECTION 2. No wife or widow of any discharged soldier or sailor shall be held to belong to either of the foregoing classes or shall be aided as such under this act unless, if his service was in the war with Spain, she was married to him before his final discharge from such service and before the passage of this act, and if his service was in

the civil war, when she was, if his wife, married to him prior to his final discharge from such service, and if his widow, prior to the ninth day of April in the year eighteen hundred and eighty. Aid given under this act shall be entitled "State Aid," and no person receiving it shall also receive military aid. The words "pensioners," "soldiers" and "sailors," singular or plural, used in this act, shall be held to include commissioned officers, and the word "sailor" or "sailors," shall be held to include marines. No state aid shall be paid under this act to or for any person of the first class to an amount exceeding three fourths of the monthly amount of his pension, nor more than six dollars in any one month, or to or for any person of the second, third or fourth class to an amount exceeding four dollars in any one month; and no more than eight dollars shall be paid to or for all dependent relatives of any one soldier or sailor in any one month. No aid shall be paid to or for any soldier or sailor on account of service in the war with Spain, or to his dependent relatives, unless he enlisted or was appointed in the service of the United States after the fourteenth day of February and prior to the twelfth day of August in the year eighteen hundred ninety-eight: *provided, however*, that state aid may be allowed under the limitations of this act to or for volunteers mustered into the service of the United States in Massachusetts regiments after said twelfth day of August but prior to the first day of January in the year eighteen hundred and ninety-nine, who shall otherwise be qualified to receive the same under the terms of this act, and to or for their dependent relatives. No aid shall be paid under this act to or for any pensioner or dependent relative when the necessity therefor arises from the continuance in vicious or intemperate habits of said pensioner, or of the soldier or sailor on whose account the same is paid, nor when there is reasonable cause to believe that such pensioner, soldier or sailor, was a deserter from the service of the United States in either of the wars aforesaid, or is wilfully absent from his family, neglecting to render them such needed assistance as he is able to give.

SECTION 3. All persons specifically referred to and to or for whom state aid is paid under any special act or resolve passed since the first day of June in the year eighteen hundred and seventy-nine, or to or for whom state aid was then being paid under any special act or resolve then repealed, shall be held to belong to the first or second class under this act,—namely, soldiers and sailors to the first class, and dependent relatives of soldiers and sailors to the second class,—notwithstanding the limitations of such classes; and state aid may be paid to or for such persons in the same manner and with the same limitations as it is paid to or for other persons of their respective classes under this act: *provided*, that no aid shall be paid to or for any person under this section contrary to any limitation or condition expressed in the original special act or resolve authorizing state aid to be paid to or for such person. All special acts and resolves granting state aid are hereby repealed, except so far as they authorize the payment of military aid, as provided in section eleven of an act entitled "An Act relative to military aid," of the acts of the current year; *provided*, that this section shall not be held to apply to any special

act or resolve specifically granting a fixed amount or an annual sum to any soldier or sailor or the dependent relative of any soldier or sailor for life or for a term therein specified, and provided that state aid may be paid under chapter three hundred and sixty-one of the acts of the year eighteen hundred and ninety-five, subject to the provisions, rules and limitations of this act.

SECTION 4. All aid furnished under this act shall be paid to or for the persons for whom it is intended, for their future benefit, and no assignment thereof shall be valid or recognized, and it shall not be subject to trustee process. No back state aid shall be paid. No greater sum shall be paid to or for any person under this act than shall be necessary to furnish such person reasonable relief; and no aid shall be paid under its provisions to or for any person competent to support himself or herself, or in receipt of income or in ownership of property sufficient for his or her own support, nor to or for any person more than is necessary in addition to the income and property of such person for his or her personal relief; and no aid shall be paid under this act to any person not in such necessitous circumstances as to require further public assistance. No aid shall be paid under this act to or for any person convicted of any criminal offence, unless or until the municipal authorities and the commissioners of state aid otherwise determine. No person shall be eligible to receive aid under this act as a worthy person who shall have been dishonorably discharged from any national soldiers' or sailors' home, or from the soldiers' home in Massachusetts, unless the commissioners of state aid, after a hearing, shall decide otherwise.

SECTION 5. Persons making application for aid in any city or town under this act shall, as a basis for the first payment thereof, state in writing, under oath, the age and residence of the person for whom such aid is sought, the relation of the applicant for aid to the person who rendered the service for which aid is asked, the company and regiment or the vessel, if any, in or to which the officer, soldier or sailor enlisted or was appointed, and in which he last served; the date and place of such enlistment, when known; the duration of such service and the reason upon which the claim for aid is founded; and shall furnish such official certificates of record, evidence of enlistment, service and discharge, as may be required. Municipal authorities granting to such applicant any subsequent aid shall from time to time make such investigation into the necessities of said applicant and the facts of the case as to preclude any payment thereof contrary to the terms of this act. The original papers in each case shall be filed with the commissioners of state aid. It shall be the duty of the commissioners to furnish from time to time to each city and town a sufficient number of blank forms for the use of applicants for aid under this act.

SECTION 6. The commissioners of state aid shall constitute a board of appeal for invalid pensioners, to decide all disputed questions relating to claims for aid arising between such pensioners and the municipal authorities, under this act. Their decisions shall be final upon the points in question. Said commissioners may, upon appeals, decide or refuse to decide upon the necessity of the claimant

for the aid; and if they shall decide upon that question, and decide that he is entitled to aid under this act, they may authorize its monthly payment to him according to this act, under such limitations as they may impose, for a term not exceeding one year, but not after this act shall become void. Said commissioners shall investigate all payments of state aid under this act so far as the interests of the Commonwealth may require. They may, with the consent of the governor, appoint, as occasion may require, one or more disinterested persons, whose duty it shall be to investigate any claim or claims made against the Commonwealth for reimbursement under this act, who may examine any persons to or for whom state aid has been paid under this act, and investigate the reasons therefor and all matters relating to the granting of such aid, and shall report his or their doings to said commissioners. The reasonable expenses of the commissioners and the expenses and compensation of any such disinterested person, approved by said commissioners and allowed by the governor and council, shall be paid from the treasury of the Commonwealth.

SECTION 7. When any sum shall have been expended under and according to this act the full amount so expended, the names of the persons aided, and the classes to which they severally belong, and the several sums paid to or for each person, and the reasons for the expenditure in each case, and the names of the persons on account of whose services the aid was granted, and the names of the regiments and vessels, if any, in which they respectively enlisted or to which they were appointed, and in which they last served, and the relationship of each dependent relative aided to the person on account of whose services the aid was granted, with such other details as the commissioners of state aid may require, shall be certified under oath to said commissioners in a manner approved by them, by the mayor, treasurer and city clerk of any city or by a majority of the selectmen of any town disbursing the same, within ten days after the first day of the month next after the expenditure is made; and the commissioners of state aid shall examine the certificates so made, and shall allow and endorse upon the same such sums as in their judgment have been paid and reported according to this act, and transmit the same to the auditor. In the allowance of said commissioners they may consider and decide upon the necessity of the amount paid in each case, and they may allow any part thereof which they may deem proper and lawful, but they shall allow and endorse any sums which they have specifically authorized to be paid under and according to their decisions, made as provided for by section six of this act. The sums legally paid as aforesaid and so allowed and endorsed by said commissioners shall be reimbursed from the treasury of the Commonwealth to the several cities and towns expending the same, on or before the first day of December in the year next after the year in which the same have been paid. But none of the expenses attending the payment of state aid shall be reimbursed.

SECTION 8. The provisions of this act shall, unless sooner repealed, continue in force until the first day of January in the year nineteen hundred and five, and no longer, and so far as they are the



same as those of existing laws they shall be construed as a continuance thereof: *provided, however*, that such provisions of this act as relate to the settlement of accounts for payment of aid rendered by cities and towns previous to said date, and to reimbursement therefor, shall continue in force one year and no longer after said date. No special act or resolve hereafter passed granting state aid to persons therein named, or their dependent relatives, shall continue in force after the date first named in this section, unless otherwise expressly provided. But the expiration of this act shall not be held to revive any act or resolve, or any part thereof, repealed by this act.

SECTION 9. Sections three, four, five, six and seven of chapter five hundred and sixty-one of the acts of the year eighteen hundred and ninety-eight are hereby repealed: *provided, however*, that if any persons to or for whom state aid may be paid under said chapter are not eligible therefor under the above provisions of this act, or are eligible to receive a greater amount than is herein provided, state aid may be paid to or for such persons under the provisions and limitations of said chapter, until, but not after, the expiration of three months after the issue of the proclamation of peace at the termination of the war with Spain; but no aid shall be paid under this act to or for persons while they are aided under said chapter, and applications for aid to such persons, returns by municipal officers relating thereto, and reimbursement by the Commonwealth of amounts paid for such aid, shall be made under the same terms and limitations as are provided in case of aid furnished under said chapter. Chapter three hundred and one of the acts of the year eighteen hundred and ninety-four is hereby repealed, but the provisions of this act so far as they are the same as those of that chapter shall be construed as a continuance thereof, and settlement of accounts and reimbursement of cities and towns for aid furnished before this act shall take effect, which under existing laws are to be made according to the provisions and limitations of that chapter, shall be so made, notwithstanding this act; and *provided, further*, that the provisions thereof referred to in said chapter five hundred and sixty-one of the acts of the year eighteen hundred and ninety-eight shall continue in force so far as may be necessary to carry into effect the provisions of this section.

SECTION 10. The soldiers' relief commissioner of the city of Boston shall, subject to the direction of the board of aldermen of said city as to the amount to be paid to beneficiaries, have and exercise the powers and perform the duties hereinbefore vested in the mayor and aldermen of said city.

SECTION 11. This act shall take effect on the first day of July in the year eighteen hundred and ninety-nine.

Approved May 18, 1899.



## THE SETTLEMENT LAW OF 1860.

*Chapter 69 of the General Statutes, which was the law of civil settlements in 1865.*

Legal settlements may be acquired in any city or town, so as to oblige such place to relieve the persons acquiring the same in case they are poor, and stand in need of relief, in the manner following, and not otherwise, namely:—

First. A married woman shall follow and have the settlement of her husband, if he has any within the State; otherwise her own at the time of marriage, if she then had any, shall not be lost or suspended by the marriage.

Second. Legitimate children shall follow and have the settlement of their father, if he has any within the State, until they gain a settlement of their own; but, if he has none, they shall, in like manner, follow and have the settlement of their mother if she has any.

Third. Illegitimate children shall follow and have the settlement of their mother at the time of their birth, if she then has any within the State; but neither legitimate nor illegitimate shall gain a settlement by birth in the place where they may be born, if neither of their parents then has a settlement therein.

Fourth. Any person at the age of twenty-one years, being a citizen of this or any other of the United States, and having an estate of inheritance or freehold in any place within the State, and living on the same three years successively, shall thereby gain a settlement in such place.

Fifth. Any person of the age of twenty-one years, being a citizen of this or any other of the United States, and having an estate the principal of which shall be set at two hundred dollars, or the income at twelve dollars, in the valuation of estates made by assessors, and being assessed for the same to State, city, county, or town taxes, for five years successively, in the place where he dwells and has his home, shall thereby gain a settlement therein.

Sixth. Any person being chosen and actually serving one whole year in the office of clerk, treasurer, selectman, overseer of the poor, assessor, constable, or collector of taxes, in any place shall thereby gain a settlement therein. For this purpose a year shall be considered as including the time between the choice of such officers at one annual meeting and the choice at the next annual meeting, whether more or less than a calendar year.

Seventh. Every settled ordained minister of the gospel shall be deemed to have acquired a legal settlement in the place wherein he is or may be settled as a minister.

Eighth. Any person admitted an inhabitant by any place, at a legal meeting, held under a warrant containing an article for that purpose, shall thereby acquire a settlement therein.

Ninth. Any citizen of this or any other of the United States, dwelling and having his home in any unincorporated place at the

time it is incorporated into a town, shall thereby acquire a legal settlement therein.

Tenth. Upon the division of a city or town, every person having a legal settlement therein, but being absent at the time of division and not having acquired a legal settlement elsewhere, shall have his legal settlement in that place wherein his last dwelling-place or home happens to fall upon such division; and when a new city or town is incorporated, composed of a part of one or more incorporated places, every person legally settled in the places of which such new city or town is so composed, and who actually dwells and has his home within the bounds of such new city or town at the time of its incorporation, shall thereby acquire a legal settlement in such new place; *provided* that no person residing in that part of a place which upon such division shall be incorporated into a new city or town, having no legal settlement therein, shall acquire any by force of such incorporation only; nor shall such incorporation prevent his acquiring a settlement therein, within the time and by the means by which he would have gained it there if no such division had been made.

Eleventh. A minor who serves an apprenticeship to a lawful trade for the space of four years in any place, and actually sets up such trade therein within one year after the expiration of said term, being then twenty-one years old, and continues there to carry on the same for five years, shall thereby gain a settlement in such place; but being hired as a journeyman shall not be considered as setting up a trade.

Twelfth. Any person of the age of twenty-one years, being a citizen of this or any other of the United States, who resides in any place within this State for ten years together, and pays all State, county, city, or town taxes, duly assessed on his poll or estate for any five years within said time, shall thereby gain a settlement in such place.

No person who had begun to acquire a settlement by the laws in force at or before the time when the preceding section took effect, in any of the ways in which time is prescribed for a residence, or for the continuance or succession of any other act, shall be prevented or delayed by the provisions of the preceding section; but he shall acquire a settlement by a continuance or succession of the same residence or other act in the same time and manner as if the former laws had continued in force. Every legal settlement shall continue till it is lost or defeated by acquiring a new one within this State, and upon acquiring such new settlement all former settlements shall be defeated and lost.

This enactment came in force June 1, 1860.

### THE FIRST MILITARY SETTLEMENT LAW.

First. Any person who shall have been duly enlisted and mustered into the military or naval service of the United States as a part of the quota of any city or town in this Commonwealth, under any call of the President of the United States, during the recent civil

war, and who shall have continued in such service for a term not less than one year, or who shall have died or become disabled from wounds or diseases received or contracted while engaged in such service, or while a prisoner in the hands of the enemy, and the wife or widow and minor children of such person, shall be deemed thereby to have acquired a settlement in such city or town; and all rights, duties and liabilities pertaining to such settlement, as set forth in chapters sixty-nine and seventy and in section forty-nine of chapter seventy-one of the General Statutes, shall attach thereto, provided such person was, at the time of his enlistment, of the age of twenty-one years, an inhabitant of said city or town, and had resided therein for six months next previous to the time of his being mustered into said service.

Second. Any person enlisted, mustered and serving as part of the quota of any city or town as set forth in the first section of this act, but who shall not be entitled to a settlement therein by reason of the want of age or residence required by said section, shall, nevertheless, be entitled for himself, his wife or widow, and minor children, to relief and support in any city or town, if at any time they should fall into distress therein, and stand in need of such relief or support; and such city or town shall not send such person, nor his wife or widow, nor his minor children, to any State almshouse nor remove them to any other place nor recover the expense of their relief from any other city or town nor receive the same from the Commonwealth; and if any city or town shall cause any person, so entitled to relief therein, to be sent to any State almshouse, or removed to any other place, such city or town shall be liable in an action of tort for all expenses of their relief and support incurred in such almshouse, or by any other city or town. But otherwise than as above provided, said city or town shall not be liable to any other city or town, nor to the Commonwealth, for the expenses of any relief or support furnished to such person, or to his wife, widow or minor children, in such other place, or in a State almshouse.

Third. The provisions of this act shall not apply to any person who shall have enlisted and received a bounty for such enlistment, in more than one town, unless the second enlistment was made after an honorable discharge from the first term of service, nor to any person who shall have been guilty of wilful desertion, or who shall have left the service otherwise than by reason of disability or an honorable discharge.

Approved May 13, 1865.

#### CHAPTER 328, ACTS OF 1868.

##### *Repeal of Naturalization. Removal. Previous Residence of Soldiers.*

Section 1. Hereafter, any person of the age of twenty-one years, having the other qualifications mentioned in the fourth, fifth, ninth and twelfth clauses of the first section of chapter sixty-nine of the General Statutes, shall be deemed to have thereby gained a settle-

ment as therein provided, although not a citizen of this or any other of the United States.

Section 2. If any person, actually becomes chargeable as a pauper to any city or town in which he has a settlement, has a settlement subsequently acquired in any place without this Commonwealth, the overseers of the poor in such city or town may cause him to be removed to said place of subsequent settlement, by a written order directed to any person therein designated, who may execute the same.

Section 3. Section one of chapter two hundred and thirty of the year eighteen hundred and sixty-five, is hereby amended, by striking from the end thereof the words, "and had resided therein for six months next previous to the time of his being mustered into said service," and by inserting the word "and" before the words "an inhabitant," in the last clause left remaining in said section.

Approved June 9, 1868.

#### CHAPTER 392, ACTS OF 1870.

*First Woman Settlement Law. Loss of Settlement before 1794. Amendment of 1865 Military Settlement Law.*

Section 1. Any unmarried woman of the age of twenty-one years who shall hereafter reside in any place within this State for ten years together without receiving relief as a pauper or being convicted of a crime, shall thereby gain a settlement in such place.

Section 2. All settlements acquired by virtue of any provision of law in force prior to the eleventh day of February, in the year one thousand seven hundred and ninety-four, except where the existence of such settlement prevented a subsequent acquisition, are hereby declared defeated and lost.

Section 3. Any person who shall have been duly enlisted and mustered into the military or naval service of the United States, as a part of the quota of any city or town in this Commonwealth, under any call of the President of the United States, during the recent Civil War, and who shall have continued in such service for a term not less than one year, or who shall have died or become disabled from wounds or disease received or contracted while engaged in such service, or while a prisoner in the hands of the enemy, and the wife or widow and the minor children of such person shall be deemed thereby to have acquired a settlement in such city or town.

Section 4. The provisions of the preceding section shall not apply to any person who shall have enlisted and received a bounty for such enlistment in more than one town, unless the second enlistment was made after an honorable discharge from the first term of service, nor to any person who shall have been proved guilty of wilful desertion, or to have left the service otherwise than by reason of disability or an honorable discharge.

Section 5. Any person who would otherwise be entitled to a settlement under section three of this act, but who was not a part of



the quota of any city or town, shall, if he served as a part of the quota of this Commonwealth, be deemed to have acquired a settlement in the city or town where he actually resided at the time of his enlistment.

Section 6. Chapter two hundred and thirty of the acts of the year eighteen hundred and sixty-five, and section three of chapter three hundred and twenty-eight of the year eighteen hundred and sixty-eight, are hereby repealed, saving all acts done, and all proceedings commenced under the same.

Approved June 22, 1870.

#### CHAPTER 379, ACTS OF 1871.

*Naturalization Law Retroactive. Amendments of 1870 Military Settlement Law and of 1794 Loss of Settlement Law.*

Section 1. Chapter three hundred and twenty-eight of the acts of the year eighteen hundred and sixty-eight is hereby amended in the first section by adding thereto the words, "whether such qualification shall have been acquired before or after the enactment hereof."

Section 2. Chapter three hundred and ninety-two of the acts of the year eighteen hundred and seventy is hereby amended, in the third section, by adding after the words civil war "or duly assigned as a part of the quota thereof, after having been enlisted and mustered into such service."

Section 3. Whenever a settlement acquired by marriage has been defeated by virtue of the provisions of the second section of chapter three hundred and ninety-two of the acts of the year eighteen hundred and seventy, the former settlement of the wife, if not defeated by the same provisions, shall be deemed to have been thereby revived.

Section 4. This act shall take effect on the first day of July next.

Approved May 26, 1871.

#### CHAPTER 274, ACTS OF 1874.

*The 1874 Amendments.*

*An Act for the more Efficient Relief of the Poor.*

Section 1. Any person of the age of twenty-one years who resides within this State for five years together and pays all State, county, city or town taxes duly assessed on his poll or estate for any three years within that time shall thereby gain a settlement in such place.

Section 2. Any woman of the age of twenty-one years who resides in any place within this State for five years together without receiving relief as a pauper shall thereby gain a settlement in such place. The first section of the three hundred and ninety-second chapter of the acts of eighteen hundred and seventy is hereby repealed.

Section 3. No existing settlement shall be changed by any pro-



vision of this act unless the entire residence and taxation required accrues after its passage ; but any unsettled person shall be deemed to have gained a settlement upon the completion of the residence and taxation herein required, though the whole or a part of the same accrues before the passage of this act.

SECTION 4. The provisions of this act shall not apply to any person who at the date of its passage is an inmate of either of the State lunatic hospitals, the asylum for the insane or the State almshouse at Tewksbury, the State workhouse, or the State primary school, until such person has been duly discharged from said institution.

Approved May 28, 1874.

#### CHAPTER 183, ACTS OF 1877.

##### *The State Temporary Aid Law.*

SECTION 1. Any city or town through its authorities, having charge of the execution of the laws for the maintenance of the poor, may, if such authorities deem it for the public interest, furnish temporary aid to poor persons found within its limits, having no settlement within the Commonwealth, and the expense thereby incurred, after notice has been sent as hereinafter provided, shall be repaid from the treasury of the Commonwealth to such city or town : *provided*, that said authorities shall give notice by mail to the general agent of State charities, who in person or by one of his assistants shall examine the case and direct the continuance of such aid, or removal to the State almshouse or to some place outside the Commonwealth, either before or after removal to the State almshouse, in accordance with existing laws, and, *provided, also*, that except in cases of sick State poor, such aid shall not be furnished at one time for a longer period than four weeks or to a greater amount than one dollar per week for each person, or five dollars a week for each family, and *provided, also*, that all claims of cities and towns against the Commonwealth, for furnishing aid under the provisions of this act, shall be rendered in detail and shall be approved by the general agent of State charities before the same shall be paid.

SECTION 2. Nothing contained in this act shall be construed to alter or repeal any of the provisions of law in regard to the sick State poor, or persons sick with contagious diseases.

Approved May 4, 1877.

#### CHAPTER 190, ACTS OF 1878.

Chapter 190, acts of 1878, is substantially chapter 83 of Public Statutes, and is printed before division one of this work. With the amendments of 1898, this is the present settlement law, with the exception of section 2, chapter 242, acts of 1879, next to be cited, which extended the right of settlement to married women.

## CHAPTER 242, ACTS OF 1879.

*Provides for Reimbursement of Aid by the Poor and for Settlement for Married Women.*

Section 1. Section one of chapter one hundred and ninety of the acts of eighteen hundred and seventy-eight is hereby amended by striking out, in the sixth clause thereof, the words "without receiving relief as a pauper," and by adding at the end of the section the words following: *provided, however,* that nothing in this section shall be construed to give to any person the right to acquire a settlement, or be in process of acquiring a settlement while receiving relief as a pauper, unless within five years from the time of receiving such relief he shall reimburse the cost thereof to the city or town furnishing the same.

Section 2. The provisions of said sixth clause shall be held to apply to married women who have not a settlement derived by marriage under the provisions of the first clause, and to widows; and a settlement thereunder shall be deemed to have been gained by any unsettled woman upon the completion of the term of residence therein mentioned, although the whole or a part of the same accrues before the passage of this act.

Approved April 22, 1879.

## CHAPTER 188, ACTS OF 1881.

*Non-pauperization by Support in Public Institutions.*

Section 1. No person in this Commonwealth, actually supporting himself and his family, shall be deemed or designated as a pauper because of the commitment of his wife or minor child or other relative to any lunatic hospital, or other institution of charity, reform or correction, by order of a Court or magistrate, and his inability to maintain them therein: but nothing herein contained shall release him from his present liability for the support of said dependent, if possessed of sufficient means.

Approved April 6, 1881.

## CHAPTER 113, ACTS OF 1882.

*Recovery by Towns from Relatives of Ability.*

Section 1. Any city or town which incurs expense for the support of a pauper having a settlement therein may recover the same against said person, his executors or administrators, in an action for money paid, laid out and expended for his use.

Approved March 27, 1882.

## CHAPTER 210, ACTS OF 1884.

*Punishment for Non-support.*

Section 1. Section four of chapter two hundred and seventy of the acts of the year eighteen hundred and eighty-two is hereby amended so as to read as follows:—Whoever unreasonably neglects to provide for the support of his minor child shall be punished by a fine not exceeding twenty dollars, or by imprisonment not exceeding six months. All fines imposed under this section may in the discretion of the Court be paid in whole or in part to the town, city, corporation, society or person actually supporting such minor child at the time of making the complaint.

Section 2. This act shall take effect upon its passage.

Approved April 30, 1884.

## CHAPTER 150, ACTS OF 1886.

Section 1. No person shall be ineligible for the office of overseer of the poor by reason of sex.

Section 2. This act shall take effect upon its passage.

Approved April 16, 1886.

## CHAPTER 401, ACTS OF 1887.

*Placing Out of Children by Board of State Charities.*

Section 1. Whenever the overseers of the poor of any city except the city of Boston fail to place out, according to the provisions of section three of chapter eighty-four of the Public Statutes any pauper child in their charge for two months from the date of their receiving such child, then the authority vested in said overseers under said section three may be exercised by the State board of lunacy and charity, to the exclusion of said overseers, and under the authority of the State board of lunacy and charity such child shall be supported by the city in the same manner as if placed out by its overseers of the poor, and shall be subject to the visitation of the board of lunacy and charity, its officers or agents, until the said State board of lunacy and charity shall be furnished with evidence satisfactory to said board that the overseers will properly care for such child in accordance with the provisions of said section three.

Section 2. This act shall take effect upon its passage.

Approved June 13, 1887.

## CHAPTER 71, ACTS OF 1890.

*Increase of Burial Allowance.*

Section 1. Section seventeen of chapter eighty-four is hereby amended by striking out the word "ten" in the thirteenth line thereof, and substituting therefor the word:—fifteen,— and by striking out the word "five" in the fourteenth line thereof, and substituting for it the word:—ten,— so that the last clause of the said section shall read as follows: And if in case of their burial the expense is not paid by such kindred, there shall be paid from the treasury of the Commonwealth fifteen dollars for the funeral expenses of each pauper over twelve years of age, and ten dollars for the funeral expenses of each pauper under that age.

Approved March 6, 1890.

## CHAPTER 90, ACTS OF 1891.

*Amendment of State Temporary Aid Law and Shortening Time for Legal Denial.*

Section 1. Section eighteen of chapter eighty-four of the Public Statutes, relating to the support of paupers by cities and towns, is hereby amended by inserting after the word "time," in the fifth line, the words:—between May first and November first, or for a longer period than eight weeks at one time for cases notified between November first and May first, or to a greater amount than one dollar a week for each person, or five dollars a week for each family; and the overseers shall in every such case give immediate notice by mail to the State board of lunacy and charity, which board shall examine the case and direct as to the continuance of such aid, or removal to the State almshouse, or to some place out of the State, either before or after removal to the State almshouse, according to law. A detailed statement of expenses so incurred shall be rendered, and after approval by the State board such expenses shall be paid from the State treasury.

Section 2. Section twenty-nine of said chapter is hereby amended by striking out the words "two months" in the second and third lines, and inserting in place thereof the words one month: so that said section shall read as follows:—

Section twenty-nine. If such removal is not effected by the last mentioned overseers within one month after receiving the notice, they shall within the said one month send to one or more of the overseers requesting such removal, a written answer, signed by one or more of them, stating therein their objections to the removal; and if they fail so to do the overseers who requested the removal may cause the pauper to be removed to the place of his supposed settlement, by a written order directed to any person therein designated, who may execute the same; and the overseers of the place to which the pauper is so sent shall receive and provide for him; and such place shall be

liable for the expenses of his support and removal, to be recovered in an action by the place incurring the same, and shall be barred from contesting the question of settlement with the plaintiffs in such action.

Section 3. This act shall take effect upon its passage.

Approved March 17, 1891.

#### CHAPTER 153, ACTS OF 1891.

##### *Extends Time for Legal Notice of State Sick Poor, and provides for Support in Hospitals.*

Section twenty-six of chapter eighty-six of the Public Statutes as amended by chapter two hundred and eleven of the acts of eighteen hundred and eighty-five is hereby further amended by striking out, after the word "section," in the second line, the word "after," and inserting in place thereof the words:—within five days next before,—and also by inserting after the word "required," in the third line, the words:—and also after the giving of such notice and until said sick person is able to be removed to the almshouse,—and by adding at the end of the section the following:—*provided however*, that when any person liable to be supported by the Commonwealth shall have received assistance in a hospital maintained for the care of the sick, the entire expense incurred by any city or town for hospital aid, not to exceed five dollars a week, shall be reimbursed to said city or town by the Commonwealth in the manner herein provided,—so that said section shall read as follows:—

Section twenty-six. The expense incurred by a city or town under the provisions of the preceding section, within five days before notice has been given as therein required, and also after the giving of such notice and until said sick person is able to be moved to the almshouse, shall be reimbursed by the Commonwealth, the bills for such support having been approved by the State board or by some person designated by it, the bills so audited being indorsed with a distinct declaration that the amount charged for has been paid from the city or town treasury: *provided however*, that when any person liable to be supported by the Commonwealth shall have received assistance in a hospital maintained for the care of the sick, the entire expense incurred by any city or town for hospital aid, not to exceed five dollars per week, shall be reimbursed to said city or town by the Commonwealth in the manner herein provided.

Approved March 30, 1891.

#### CHAPTER 343, ACTS OF 1891.

##### *Penalty for False Answers to Authorities.*

Whoever knowingly and wilfully shall make in writing any false representation to the overseers of the poor of a city or town, or to



their agent, or to the State Board of Lunacy and Charity or any of its agents, for the purpose of causing any person to be supported in whole or in part as a pauper by any city or town or by the Commonwealth, shall be punished by a fine not exceeding two hundred dollars or by imprisonment in the house of correction not exceeding one year.

Approved May 16, 1891.

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# A SUPPLEMENT

TO THE

TREATISE ON THE MASSACHUSETTS LAW  
OF SETTLEMENT, CONTAINING IN THE  
FIRST DIVISION A STATEMENT OF THE  
MORE IMPORTANT LEGISLATION, DECISIONS  
AND OPINIONS RELATING TO POOR  
RELIEF THAT HAVE BEEN PRINTED IN  
THE LAST TEN YEARS, IN THE SECOND  
PART THE LEGISLATION CONCERNING  
CONTAGIOUS DISEASE, WITH SOME  
SUGGESTIONS OF POSSIBLE DEFECTS  
IN THE PRESENT LAW, AND IN THE  
THIRD PART HINTS TO OFFICIALS  
CHARGED WITH THE EXECUTION OF  
THE VARIOUS SOLDIERS' AID LAWS

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BOSTON

GEO. H. ELLIS CO., PRINTERS, 272 CONGRESS STREET

1909





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## SUPPLEMENT TO MASSACHUSETTS SETTLEMENT LAWS.

There have been few additions to the body of laws connected with poor-relief in the last ten years, but the decisions of the courts have been as numerous as usual, and in many respects most important. It is proposed, in the following pages, to make a brief enumeration of the laws passed, and to follow with a discussion of the important decisions based upon those laws, as well as upon those passed before the first part of this book was published.

In 1902 a law was passed taking from overseers of the poor the management of cases of contagious diseases and devolving it upon boards of health. The changes can be found in Chapter 75, Revised Laws, and in Section 57 of that chapter may be read the essential provisions that entail upon those boards the duties formerly performed by overseers of the poor. Those interested in this department of public aid are referred to the chapter relating to contagious diseases in this book, in which the general subject is treated at length, and some suggestions are made as to needed amendments and changes. The principal litigated case under this new law is reported in 187 Mass. 150, *Haverhill v. Marlborough*, and therein are to be found the latest opinions.

In 1903 a law was passed regarding the removal of sick persons to the State Hospital, and, as that question continually arises where the towns and the State officials disagree as to the continuance of aid, the act is here printed in full for convenient reference:—

## CHAPTER 233.

*An Act Relative to the Removal of Sick Paupers to the State Hospital.*

*Be it enacted, etc., as follows:*

Section ten of chapter eighty-five of the Revised Laws is hereby amended by striking out all after the word "health," in the fifth line, and inserting in place thereof the following:—*provided, however*, that in case of doubt as to the safety of such removal such officer or agent shall obtain a certificate of <sup>a</sup> competent physician that at the request of such officer or agent he has examined such pauper, and that in his opinion such pauper can so be removed without injury or danger to his health: and *provided, also*, that such removal shall be made whenever ordered by the state board of charity,—so as to read as follows:—*Section 10.* No city or town officer or agent having the care and oversight of a sick pauper shall remove or attempt to remove him or cause him to be removed to the state hospital unless there is reasonable cause to believe that such removal will not injure or endanger his health: *provided, however*, that in case of doubt as to the safety of such removal such officer or agent shall obtain a certificate of a competent physician that at the request of such officer or agent he has examined such pauper, and that in his opinion such pauper can so be removed without injury or danger to his health: and *provided, also*, that such removal shall be made whenever ordered by the state board of charity. *Approved April 14, 1903.*

In the session of 1908 a law was passed by which the expense for the support of epileptic and feeble-minded persons, which had before been borne by the town of settlement, should, after December 1, 1908, be devolved upon the State, as was the charge for the support of the insane after January 1, 1904. This act will be found in Chapter 629 of the Acts of 1908.



There is no doubt that the sentiment of overseers of the poor throughout the State was and is practically unanimous in favor of these changes. The relief from the vexatious and intricate and costly investigations that are necessary in these cases is very great, and, as the call for larger appropriations from the town treasury is no longer necessary, it is not strange that the overseer who says, None of us would think for a minute of going back to the old condition, voices the conviction of all but the most insignificant minority. But, if truth and fact should after all prove to be on the other side, the size of the majority that goes wrong merely increases the gravity of the mistake. It is as true now as it was ten years ago that the money to pay these bills all comes from the treasuries of the towns, and in the long run the tax-payer will not find it easier to pay one dollar in the disguise of a State tax than he did to pay half as much as his part of the appropriation for the overseers of the poor. But this is probably an extravagant statement of the increase. Under the former condition the amount of expense in a given case was presented to each voter at the annual town meeting, and it remains to be seen whether a wise economy will be better served when the question of a proposed new charge is remitted to a body of men who are probably more interested in the development and success of their institution, than in the immediate charge to the tax-payer. In the hospitals for the cure of disease it is found to be practically impossible to interest the management in any question connected with the treasury of the supporting town, in the matter of time of discharge, and the same lack of interest must sooner or later show its effect in the institutions under consideration. Clearly, the persons who cause these changes, and then complain of the unprecedented increase in the State tax, have not duly considered that maxim of a late

governor of the Commonwealth, that it is impossible to make omelets without breaking eggs.

The opinions of the Attorney-Generals in the last ten years, aside from those quoted in the section treating of aid to soldiers, are unusually interesting and instructive. Especially in that most difficult and most practical question that comes to overseers to decide, that of domicile, the literature of the period since the first part of this book was printed, is of great interest.

The first is one given before some of those printed in 1900, and is here given because it settles the status of a woman whose derivative settlement by her husband was lost by the provisions of the Act of 1898:—

JANUARY 10, 1899.

STEPHEN C. WRIGHTINGTON, ESQ.,

*Superintendent, State Adult Poor:*

*Dear Sir:*—The case stated in your letters of October 1, 1898, and January 9, 1899, is this:—A man, born in Massachusetts, had a settlement in Leominster, acquired prior to 1860. This settlement was lost by the provisions of St. 1898, c. 425, § 2. His wife acquired settlement in the same place by her marriage. Her settlement also was lost by the same statute. From 1874 to 1882, while married, she resided in Athol, without receiving aid.

The question submitted by your letters is, whether, assuming that her marriage settlement was lost by St. 1898, c. 425, § 2, her residence in Athol gives her a settlement under St. 1879, c. 242, § 2.

St. 1878, c. 190, § 1, cl. 6, re-enacting St. 1874, c. 274, § 2, provides that "any woman of the age of twenty-one years, who resides in any place within this state for five years together, without receiving relief as a pauper, shall thereby gain a settlement in such place." It was held in *Somerville v. Boston*, 120 Mass. 574, that this provision applied only to unmarried women.

By St. 1879, c. 242, § 2, it was further provided that the

clause quoted should be held to apply to married women who have not a settlement derived by marriage.

An examination of these statutes makes it evident that a married woman, having a settlement derived by marriage, could acquire no settlement under the clause quoted. As to such, the statute never existed.

St. 1898, c. 425, § 2, declares that all settlements acquired prior to 1860 are defeated, "provided that, whenever a settlement acquired by marriage has been thus defeated, the former settlement of the wife shall be thereby revived." This provision, however, does not revive a settlement which never existed. As above stated, the residence of the married woman in Athol did not give her any rights to a settlement; and, consequently, no settlement in Athol was ever acquired by her.

The case is different from that stated in *Fitchburg v. Ashby*, 132 Mass. 495, which dealt with a statute retroactive only in so far as it permitted rights under the statute to be acquired prior to the enactment of the statute.

Yours very truly,

HOSEA M. KNOWLTON,

*Attorney-General.*

The next opinion cited has an application considerably narrower, inasmuch as it covers only those cases in which a poor person aided in some State institution has relatives held by law for his support. And the question settled is simply whether the State may hold the town or must sue the relative. As it is still a matter that may arise, at any time, in connection with the hospital at Tewksbury, for convenient reference the opinion is here cited in full:—

#### PAUPER LAW—SETTLED PAUPER—LIABILITY FOR SUPPORT.

Where a pauper inmate of a State institution has a settlement in any city or town in this Commonwealth such city or town is liable to the Commonwealth for his support, notwithstanding the fact that there may be kindred or other

persons who are bound by law and are of sufficient ability to defray the expense incurred therefor.

JULY 13, 1903.

J. F. LEWIS, M.D., *Superintendent State Adult Poor*:

*Dear Sir*,—In your letter of May 4 you state that in certain cases the overseers of the poor of cities and towns within the Commonwealth acknowledge the settlement of pauper inmates of State institutions to be in such cities and towns, but deny their liability for the support of such persons for the reason that they allege that there are relatives or kindred bound by law to support the pauper, who are of sufficient ability so to do.

R. L., c. 85, § 20, is as follows:—

A city or town in which an inmate of the state hospital is found to have a legal settlement shall be liable to the commonwealth for his support in like manner as one town is liable to another in like cases; and in such case, the state board of charity shall adopt such measures relative to notice, removal of a pauper and recovery of expenses as are prescribed for towns in like cases.

Section 21 provides that:—

The kindred who are liable by law to towns for expenses in supporting such paupers shall in like manner be liable to the commonwealth for any expense incurred for such paupers; and the state board of charity may adopt the same measures and institute like proceedings for the recovery of such expenses from the kindred so liable as are prescribed for towns in like cases.

I am of opinion that where a pauper, an inmate of a state institution, has a settlement in any city or town within this Commonwealth, such city or town is liable for his support, notwithstanding the fact that there may be some person or persons who are bound by law and who are able to defray the expense incurred by the Commonwealth.

It is true that under the provisions of section 21, above

quoted, the Commonwealth has an alternative remedy against the kindred of a pauper, should they be in a position to aid in his support; but the liability for the maintenance of settled paupers who are inmates of State institutions is primarily imposed upon the cities and towns in which such paupers have settlements; and it can hardly be maintained that a city or town could successfully defend a claim brought by the Commonwealth under the provisions of R. L., c. 85, § 20, upon the ground that the kindred of the pauper for whose support the action was brought were also liable.

Very truly yours,

HERBERT PARKER,

*Attorney-General.*

Following is a decision of the Supreme Court which is printed here in full because it is a very full statement of the law of domicil, and because there is a very full citation of authorities, including some of other than pauper cases:—

### SUPREME COURT DECISION.

---

#### INHBTs. OF PALMER *v.* INHBTs. OF HAMPDEN.

Hampden. Supreme Court.

Jan. 10, 1903.

Pauper Settlement—Evidence.

Contract to recover money expended by the plaintiff for the support of a pauper. In the Superior Court Maynard, J., found for the plaintiffs and defendants excepted.

T. W. Kenefick and E. E. Hobson for plaintiff.

D. E. Webster and C. S. Ballard for defendant.

LATHROP, J. 1. The first point presented is whether at the time of the relief furnished to the pauper she had her settlement in the town of Hampden. It is admitted that in April, 1894, she had a settlement in that town. This settlement, by force of the statute, Pub. Sts., c. 83, s. 5, continued until she acquired a new settlement elsewhere in this state. The question then is whether on the evidence the judge



was warranted in finding that no other settlement had been acquired by her.

The pauper left Hampden in April, 1894, and went to Palmer, intending to make that place her home in the future, with Mrs. Shaw, a cousin. After going to Mrs. Shaw's, she made visits, and worked in other towns. About Thanksgiving, 1897, Mrs. Shaw leased her house in Palmer, and bought a farm in Brimfield; and moved upon it with her husband and family, with the intention of living there the rest of her life; but, after residing eight or nine months in Brimfield, Mrs. Shaw returned to Palmer to reside.

The pauper testified that when she learned of Mrs. Shaw's purpose to leave Palmer she was working in Hampden, and she went to Mrs. Shaw's and got what things she wanted to keep, and told Mrs. Shaw she could burn the rest, that when Mrs. Shaw moved to Brimfield, she, the pauper, never expected to go back to Palmer, though that seemed more like home to her than any other town.

While Mrs. Shaw was in Brimfield, the pauper worked in Hampden and in Monson. In January, 1900, while working in Hampden, she became ill and went to Mrs. Shaw's in Palmer, where she has since resided, being unable to work; and since October, 1900, the pauper has been aided by Palmer to the extent of \$2 a week, paid to Mrs. Shaw for her board and care.

While the judge made the first finding of fact in favor of the plaintiff, he declined to make other findings asked for by the plaintiff; but he made further findings of fact which we have in substance set forth, and also found that the pauper never gained a settlement in Palmer; and found for the plaintiff.

We are of opinion that, so far as the question of settlement is concerned, we cannot say that the judge was wrong.

Settlements may be acquired in various ways, as pointed out in the Pub. Sts., c. 83, s. 1. The only provision which has any bearing upon this case is cl. 6 of this section, which provides: "Any woman of the age of twenty-one years, who resides in any place within this state for five years together shall thereby gain a settlement in such place."

It is urged, however, that the word "resides" in the

clause under consideration is equivalent to having a domicile, and that the first finding of the judge is equivalent to a finding that the pauper acquired a domicile in Palmer. *Stoughton v. Cambridge*, 165 Mass. 251. And the argument is that having once acquired a domicile there she retained it until she acquired one elsewhere. The defendant asked the judge "to find as a fact that when Mary A. Walker removed from Hampden to the town of Palmer it was with the intention of making Palmer her home in the future, and that she continued to regard the town of Palmer as her home." The judge made this finding; and this is the basis of the argument above stated. But the judge also found specially that when Mrs. Shaw removed from Palmer, the pauper, who was then employed in Hampden, "took from the house of Mrs. Shaw, in Palmer, all the belongings which she cared to save, to the place of her employment in Hampden, having no intention of ever again making her home in Palmer." These two findings of fact must be taken together, and they are not irreconcilable. To regard a place as a home after one has left it and removed all her belongings is not equivalent to having no intention "of ever again making her home there."

But, even if the pauper intended when she left Palmer to return at some indefinite time, this would not be enough to retain her domicile in Palmer. What constitutes a domicile is mainly a question of fact, and the element of intention enters into it. *Olivieri v. Atkinson*, 168 Mass. 28. Mere intention without proof of other facts with which such intention can be connected is not enough. *Holmes v. Greene*, 7 Gray, 299. So to acquire a new domicile it is not necessary for a person to reside in a place with the purpose of making it his permanent home and residence. It is enough if he resides there with the intention to remain for an indefinite period of time, and without any fixed or certain purpose to return to his former place of abode. *Whitney v. Sherborn*, 12 Allen, 111.

The case at bar closely resembles in its facts those in *Wilbraham v. Ludlow*, 99 Mass. 587. In that case it was held that a laborer who abandoned his home and worked in different towns, with no opinions, desires, or intentions

in relation to his residence, might be regarded as having a home or domicil wherever he worked. In the case before us the pauper left Palmer to go to Brimfield in 1897, and did not return to Palmer until 1900. If she left Palmer with no intention of ever returning there to make the place her home, she might well be regarded as having given up her domicil, and as having acquired a new one wherever she worked. The pauper herself testified that when Mrs. Shaw moved to Brimfield, in 1897, she never expected to go back to Palmer. There was also evidence in the case that the pauper said that when she was at work in Monson, Hampden and different places, she considered it her home wherever she stayed over night, and that she had not lived in Palmer or in any other town five years since she left Hampden.

If the granting of the first request for findings of fact is to be construed as a finding that the pauper acquired a domicil in Palmer, the refusal to find other facts and the special findings of the judge may well be construed as amounting to a finding that the pauper acquired a domicil in other places; and as the pauper did not have her domicil in any place for five years together, her settlement in the defendant town remained.

There is one finding of the judge which remains to be considered, which is that when the pauper learned of the return of Mrs. Shaw to Palmer, she again arranged with Mrs. Shaw to make her home with her as before her removal from Palmer. When this was done does not appear. In fact the pauper did not return to Palmer until 1900, while Mrs. Shaw returned there in 1898. If the pauper had acquired a domicil in another place, she did not change it in fact until she returned to Palmer.

2. The remaining question is whether the pauper fell into distress and stood in need of immediate relief, when aid was furnished her. Pub. Sts., c. 84, s. 14. The judge found this issue in the affirmative. It appears that all proper notices were given, and the only ground upon which it is contended that the pauper did not stand in need of immediate relief is that she had at the time \$50 in a savings bank in Monson.

Whether a person stands in need of immediate relief is

largely a question of fact; and this court will not revise the finding of the court below, unless it is clearly erroneous. *Templeton v. Winchendon*, 138 Mass. 109. There can be no doubt that the evidence shows a case to warrant the judge in finding as he did, unless the mere fact that the pauper had \$50 in the bank compels us to rule, as matter of law, that the finding was wrong. We are of opinion that the judge below was right. In *Oakham v. Sutton*, 13 Met. 192, 196, it was said by Chief Justice Shaw: "All which could be required of officers would be vigilant inquiry, and sound judgment in determining whether one obviously and apparently in need of relief is really so. Instances are not wanting of persons living in almshouses, or otherwise supported by public charity, on whom have been found considerable sums of money concealed amongst the rags which indicated most squalid poverty. If overseers who are bound by law to afford immediate relief to actual want, and who must act upon the evidence before them, are sometimes deceived by appearances, still their acts, done in good faith, must be deemed acts binding on the town. See also *Sturbridge v. Holland*, 11 Pick. 459; *Templeton v. Winchendon*, 138 Mass. 109.

Exceptions overruled.

The opinions of the Attorney-General printed in the portion of this work relating to soldiers will be found to contain matter of interest to overseers of the poor as well as to selectmen, but in the following cases, bearing on the rights of the soldier, it is reason for regret that no written opinion of the Attorney-General can be cited, as only a verbal opinion was given. The question raised is a most interesting one, involving as it does the relation of State law to the action of the War Department at Washington.

A soldier who served more than a year on the quota of a Massachusetts town is shown by the muster-out roll of his company to have left the service without an honorable discharge. The law approved May 13, 1865, provides that any person who so leaves the service shall not have a

settlement in the town on whose quota he served, and all the later codifications of the law continue that provision, which is a part of Chapter 80 of the Revised Laws.

Between 1889 and 1892 the soldier presented to the authorities at Washington such evidence that he was granted an honorable discharge as from the date of the termination of his service, though bearing date of nearly twenty years later. On these facts the office of the Attorney-General gives the opinion that on a question of soldiers' relief, the right to which is based on pauper settlement, the town on whose quota he served would not be allowed to show the fact of the original certificate in the face of the later record. The suggestion that the matter of fact is still a question of evidence, and that the Washington certificate cannot be held to set aside a conclusion of State law, meets with no favor, the simple answer being, "This is a mistake in the former record, which the later investigation corrects, and there can come before the court no former finding that can affect the honorable discharge of 1882." It is conceivable that a later hearing might remove some of the former evidence of guilt, so that the soldier might thereafter be eligible to pension, and not liable to imprisonment on apprehension, and it may be true that in some case of incorrect transcription of name, or mistaken identity, an absolute reversal of all the consequences of the misconduct would be right, but that it should ever become impossible to prove that the first entry was right and the second fraudulent is abhorrent to every natural sentiment of right.

Consider another case, not as giving us the benefit of a leading opinion, but as illustrating the variety of questions occurring in this connection. An officer in a Massachusetts regiment loses his sergeant by sickness, and is very anxious to get the body safely to Northern Massachusetts. He receives an order to carry it to Acquia Creek, on its way



by transport to Washington. Arrived at Acquia Creek, he finds the boat gone, and thinks best to keep on to Washington. By reason of the expense thus incurred or in some other way he finds himself short of money, which he fails to get after waiting two days in Washington for a paymaster, and then he adopts the expedient of erasing "Acquia Creek" from his order of detail, and substituting therefor the name of the town to which he carries the body. Arrived there, he delays no longer than the Sunday of the burial, and then makes haste to rejoin his regiment. The result of a court-martial is that he is dishonorably discharged from the service. He remains thereafter out of the service, asking for reversal of the sentence, and finally gets answer from the War Department that, while it has no power to reverse the decision of a court-martial, it will not object to his being again commissioned if he can find any governor who will appoint him. As a matter of fact, his service terminated at this point; but, in case of a vote of Congress declaring him eligible to pension and in view of the action of the War Department cited, it is a question what a court would say if the question were mooted as to his settlement in a town on whose quota he had served for more than one year. Before 1889 there would have been no question in either of these cases, and perhaps few settlement officers would see any in the last even now.

The opinion next cited covers no more ground than the assumption that the settlement of an illegitimate child sometimes survives, when the settlement of a legitimate child would be lost under the same conditions. In the particular case at issue all interest ceased by the passage of the law, Chapter 629 of the Acts of 1908, removing the charge for the future support of the feeble-minded illegitimate from Tisbury. Still, if settlement by birth alone is once more the law, and we are to read the decision of the Supreme

Court in 13 Mass. 381 to mean that the illegitimate who never gained in its own right shall still continue to follow the mother for sixty years after attaining majority, there is hardly a town in the State that might not be affected by that reading.

The opinion is here given in full, and then follows the reasoning by the author of this treatise, by which a different conclusion was reached in 1905. It is because this reasoning and citation of the Attorney-General are now applied by certain relief officers to a different collection of facts, and to a sweeping clause in the final section of Chapter 80 of the Revised Laws, that it seems necessary here to consider it at length. The clause referred to is that which provides that a person absent from the State for ten years shall lose his settlement.

### ATTORNEY-GENERAL'S OPINION.

SEPTEMBER 28, 1906.

J. F. LEWIS, M.D., *Superintendent State Board of Charity:*

*Dear Sir,*—Replying to your request for an opinion as to whether the settlement of Amelia F. West was affected by the provisions of section 6 of chapter 80 of the Revised Laws, the material facts are as follows:—

Amelia F. West, born December 25, 1862, at Tisbury, Massachusetts, illegitimate, was committed to the Massachusetts School for Idiotic and Feeble Minded Youth, September 23, 1875, and has been an inmate of that institution since that time as a charge of the town of Tisbury. Her mother, Mary F. West, was born in 1820 in Richmond, Virginia, and came to Tisbury, Massachusetts, when a child, and lived in that town continuously until her death, October 17, 1894. She was married in Tisbury, January 27, 1840, to Edward F. West, and lived with him until his death, June 7, 1854. Mary F. West did not, as the widow of said Edward F. West, after May 1, 1860, live any period of five years without receiving relief as a pauper.

Revised Laws, chapter 80, section 6 (St. 1898, c. 425, sect. 2), is as follows:—

“Any settlement which was not fully acquired subsequent to the first day of May in the year eighteen hundred and sixty is hereby defeated and lost, unless such settlement prevented a subsequent acquisition of a settlement in the same place; but if a settlement acquired by marriage is so defeated, the former settlement of the wife, if not also so defeated, shall be revived. A person who is absent from the Commonwealth for ten consecutive years shall lose his settlement.”

From these facts it appears that Mary F. West had, on December 25, 1862, a settlement in Tisbury derived from her husband, Edward F. West. This settlement was not fully acquired subsequent to May 1, 1860. The existence of it did not prevent a subsequent acquisition of a settlement by Mary F. West, for she has not since that time lived any period of five years in that town without receiving relief as a pauper. Any settlement which she had prior to her marriage was not acquired subsequent to May 1, 1860, she having married Edward F. West in 1840. It follows that by the operation of Acts of 1898, chapter 425, section 2 (R. L., c. 80, sect. 6), the settlement of Mary F. West in Tisbury was defeated and lost.

The question raised by the present question is whether the settlement of Amelia F. West, which was derived from her mother, was also, by the operation of this statute, defeated and lost.

Revised Laws, chapter 80, section 1, clause 3, provides:—

“Illegitimate children shall have the settlement of their mother at the time of their birth if she then has any within the Commonwealth.”

In statutes of 1793, chapter 34, this provision was in the following form:—

“Illegitimate children shall follow and have the settle-

ment of their mother at the time of their birth, if any she shall then have within the Commonwealth." . . .

This statute was interpreted by the court in *Boylston v. Princeton*, 13 Mass., 381. In that case it was said:—

"The rule, as now established, is that illegitimate children shall have the settlement of their mother *at the time of their birth*; meaning, as we apprehend that, the settlement, which the mother had at the time of the birth of the child, until it should gain a new settlement by its own act."

This is even more clearly the meaning of the statute in its present form; consequently, Amelia F. West, by reason of her birth in the town of Tisbury, and by reason of that fact alone, acquired a settlement in that town, which was unaffected by any change in the settlement of her mother. The birth taking place after May 1, 1860, the settlement was fully acquired subsequent to that date, and it was consequently not defeated and lost by the operation of statutes 1898, chapter 425, section 2 (R. L., c. 80, sect. 6).

Very truly yours,

DANA MALONE,

*Attorney-General.*

BOSTON, December 15, 1906.

WILLIAM J. LOOK, ESQ., *Chairman Overseers of the Poor, Tisbury, Mass.:*

*Dear Sir,*—At your request I send you a statement of the grounds on which I gave you an opinion, a year ago, that Amelia F. West, supported by you in the School for Feeble-minded, since 1875, has no longer a settlement in Tisbury.

In making that statement I shall try, so far as possible, to avoid the appearance of argument in opposition to the opinion of the Attorney-General.

I recognize the result of that opinion as having little less than the effect of a judicial decision, and no one appreciates more fully than I the necessity of a legal education to enable

one to comprehend the comparative effects of legislative enactments and judicial decisions.

The 1898 statute of loss is now known to have the effect of former attempts to simplify the statutes, in introducing combinations and results not foreseen when it was passed, and it was not without a careful review of those effects that I ventured to give the opinion.\*

One thing seemed clear to me: that the feeble-minded girl must stand or fall with the mother, and that the derived settlement of the child could not outlive the acquired settlement through which it came, and when it is conceded that the claim of Amelia's mother was lost by the provision above mentioned, I am unable to understand how that which wholly depends upon it, which never could have existed without it, can last one day beyond the death of that which sustained it and gave it its only life.

Noting the difference in the wording of the sections, relating to legitimate and illegitimate children, it might be claimed that the legislature intended some special limitations or privileges for the former, by the naming of the time after their birth during which they should continue to have the settlement of the mother, which provision does not appear in the other case.

But the fact is that the Court in 12 Mass., page 431, says that "it is evidently the purpose of the legislature to give illegitimates the same rights that it gives legitimates," and expressly contradicts that opinion. This decision, unmodified by later enactment or decision so far as I have been able to find, disposes forever of the claim that illegitimates have peculiar rights of continuance of settlement.

If we study the successive phases of the law, we shall find ample reason for this phrase "until he gains by his own act," without resorting to this explanation.

A summary of our pauper laws made in 1810, since which the phrase in controversy has been a part of the law, divides the stages of legislation into five periods, and I give here

\*Readers should not forget that what follows is not a dissent of the author from the opinion of the Attorney-General, but only a suggestion that the opinion seems not to follow the lines of previous decisions of the Supreme Court. Writing for the benefit of laymen as ignorant as himself, the author cannot discharge his duty to those to whom these questions are now submitted for the first time, without calling their attention to the sources from which a reliable knowledge of the reasonings of both sides on the point at issue may be gained.



the status of illegitimates under each so far as changes are concerned.

From 1692 to 1701 illegitimates were settled in their birthplace without regard to the settlement of parents.

From 1767 to 1789, they followed the condition of the mother, and 4 Mass. 135 says that the statute of 1789 abrogated the gaining by birth alone. But it was so worded that illegitimates not only took the settlement of the mother at time of birth, but also changed with her new settlements gained later by marriage. 12 Mass. 429.

This following of the mother to new settlements under the provisions of the statute of 1789 was without doubt the reason for the introduction of the exceptional clause "by some act of its own," where it first appears.

It has not been questioned, in the case of legitimates, as well as of wives, where the provision for the following the father and husband is practically the same, that the loss of the primitive sweeps away the derivative, and it is interesting to note that in the case where the legislature is superseding settlement by birth alone, and providing that thereafter it shall be where the mother's is at the time of its birth, it adds that the new settlement shall be gained only by the act of the illegitimate. Now, conceding that the settlement of the mother was lost by the operation of chapter 425, section 2, it surely is not hair-splitting to ask what is the "act" which gave the daughter a new settlement after May 1, 1860.

13 Mass. 381 furnishes these explanatory phrases, all implying an interval of time, and succession of acts between the derivation from the mother and the acquisition by the illegitimate of the new settlement, "by some act of its own," "until they should acquire one of their own right," "meaning that the settlement which the mother had at the time of its birth should continue until it should gain a new one by its own act."

To hold that the passive occurrence of birth is also an "act" of the child creating at the same moment a "new" settlement out of that passive condition, and changing a derived settlement to an acquired settlement, without intervention of time, or the accession of any new condition,

will be found, I believe, to imply a combination of ideas that most uninstructed minds will find it hard to comprehend, as also, perhaps, the statement in the opinion of the Attorney-General that the settlement was gained by the fact of birth alone, in contravention of the fact that 4 Mass. 135 states that the statute of 1767, 1789, abrogated that method of gaining.

Very respectfully,

HENRY SHAW.

Persons absent from the state for ten years shall lose their settlement.

This law has been a stumbling-block for ten years, and perhaps we are still only at the beginning of the interpretations that have been given to the meaning of its provisions. First it was suggested that those who went away in 1888, and were already absent ten years in May, 1898, had already lost their settlement, and then it was thought that where a portion of the time elapsed after the passage of the law, as a case of a man who went away in 1890, and was absent until 1900, would be embraced in its provisions. These doubts were set at rest by the opinion of Attorney-General Knowlton given in July, 1899, and printed on page 176 of this book, that the law is not retroactive in its operation, and since that time it is not considered to have gone into effect until May, 1908. What is the effect of this change in the law upon one who returns after a ten years' absence to find that the right that he inherited from his ancestors has been lost forever? He still continues to grow old, to be hungry, and to be liable to sickness. The statute says that, suffering from these conditions, the local authorities shall relieve him, but under the new conditions they can do it only under the direction of a State visitor who may be fifty or one hundred miles away. If it happens that the State visitor has grown to think that the applicant asks for too much, he may leave directions that no more

be given at present, and then, if the local overseer, overcome by some story of sickness or sudden emergency, gives aid, he will probably find it difficult to get it paid back by the State.

If the necessity for aid ceased when the right to it from a given town ended, or even if there were any large saving to the towns as a whole, as a result of the change, there would be something to be said in its favor, but, when it is said that by the change the labor of looking up the settlement is saved to the overseer at the cost of more or less pain and suffering to the dependent, the case seems closed, for the persons still have to be aided, and the towns still have to pay.

A canvass of opinions as to the meaning of the law, at a recent meeting of the most intelligent experts in the State, showed as many constructions as there were speakers, and it becomes clear at once that an explanatory statute is needed. One holds that, when the father of a family is away ten years, not only he, but all who hold by him, will thereupon lose all claim. Another holds that only the person going away loses, so that a son absent from twenty-one to thirty-one might return to find his parents and brothers and sisters still in possession, and he only expatriated. Another believes that, if a man, the father of the family, was the only one away, his family remaining in the State, he only would lose.

Some effects of this statute on honorably discharged Massachusetts veteran soldiers, more properly fall into the third division of this treatise, and those who are interested in the subject will find the comments on page .

In the confusion of tongues occasioned by the attempt to discover the meaning of the final clause of Chapter 80, now under discussion, the author found it, and still finds it, impossible to read it with any other interpretation than as applying to the person in whom the settlement is existent, and to those who hold by him. It is quite probable that

authoritative decision will arrive at a different result, but, until it comes, he must continue to believe that the ground taken by him in the *Amelia West* case is the only one that the decisions justify,—that the destruction of the root is the death of the branches.

The first sentences of this very section 6, Chap. 80, Revised Laws, that we are considering seem to place this construction beyond doubt. There is nothing to show, in the language of the first part, that there is any purpose or effect which reaches beyond the one person who has gained, or might have gained, but the proviso following makes it clear that the unmentioned wives and children have also been included in the provisions.

One more subject, of vital interest to towns who employ physicians on a fixed salary, and suggesting the necessity of some amendment of the law which the general opinion of legal advisers finds defective, will close this section.

Before quoting the opinion of the Attorney-General in the Cambridge case, it will be profitable to consider briefly the adjudicated case of *Taunton v. Talbot*, 1904, out of which the doctrine set forth in that opinion apparently grew.

There were few almshouses in Massachusetts fifty years ago that did not harbor a man similar to Talbot. Capable of good work under direction; willing to work, if not too hard or too long; good-tempered, so that they were apt to be the butt of the boys when they went to the village; hindered from going out into the world by lack of capacity for self-direction,—these men constantly saved the farm the pay of a hired laborer.

The authorities at Taunton fully recognized that Talbot owed the city nothing, and it was only by the interference of meddlers that they were placed in a false position.

Under the circumstances there was no other possible finding than that nothing but a careful individual account,

of labor income and support outgo, could determine the fact of indebtedness. But, if Talbot had done no work and had been fully supported, it would have been just such a case for recovery by suit as is provided for by the statute Chapter 81, Section 9.

The only apparent ground of similarity of almshouse support with the Cambridge case now to be cited is in the familiar situation where, with all the arrangements made for feeding the inmates of an almshouse on a given day, it is constantly shown that no additional expense is incurred by feeding one or two more, who come in at the eleventh hour, than the five hundred who were first provided for.

That is to say, the coming of the two involves no additional expense, and it is equally true that it involves just as much expense as does the feeding of each one of the five hundred. A given plant is necessary for the estimated call, and, if the two late-comers bade fair to be fifty, the plant would immediately increase, all going a little short meantime.

A great railway system finds it convenient to sell all its cases to an accident insurance company. It draws its check at the beginning of the year, basing the amount given on what it has been called upon to pay in past years. If the amount recovered of the insurance in damages, increases for a term of years, the company will surely be called upon to pay more, and, if it were to plead that it had paid nothing for a given accident because the amount paid did not depend upon the occurrence of that accident, it would be the same plea that justifies the refusal to pay for the services of the doctor.

In this case and in that of the poor person who has medical aid from a salaried man whose salary is clearly contingent upon the number of cases that he is called to attend, the same principle seems to prevail.



Here follows the decision of the Attorney-General, and the facts on which it is based are therein set forth:—

THE COMMONWEALTH OF MASSACHUSETTS.

DEPARTMENT

OF THE ATTORNEY-GENERAL.

BOSTON, February 15, 1908.

J. F. LEWIS, M.D., *Superintendent State Adult Poor*:

*Dear Sir*,—You request my opinion as to the liability of the Commonwealth to the city of Cambridge for medical aid rendered to an unsettled poor person. The aid referred to consisted of 1.18 charged for two visits of the city physician, and 35 cents for medicine furnished by him.

It appears that the office of city physician in Cambridge was created by special ordinance, being chapter 45 of the Ordinances of 1892, as amended by an ordinance passed October 20, 1893. From these it appears that the duties of the city physician include those of attending, under the direction of the overseers of the poor, upon all sick and insane paupers and other patients under the care of the city authorities or at the almshouse or elsewhere, and in general to perform all duties incumbent upon him by the laws of the Commonwealth or the ordinances of the city. It further appears that he shall receive such salary as the city council may by ordinance from time to time determine, which shall be in full for all services performed by him.

Revised Laws, chapter 85, section 14, provides in part that persons who are infected with diseases dangerous to the public health, etc., or whose health would be endangered by removal, but who are liable to be maintained by the Commonwealth, shall be supported during their sickness by the city or town in which they are taken sick, and notice of such sickness shall be given in writing to the state board of charity.

Section 15 provides, in part, that:—

“The reasonable expense which is incurred by a city or town under the provisions of the preceding section within five days next before notice has been given as therein required and also after the giving of such notice and until

said sick person is able to be removed to the state hospital shall be reimbursed by the Commonwealth. The bills for such support shall not be allowed unless they are indorsed with the declaration that, after full investigation, no kindred able to pay the amount charged have been found, and that the amount has actually been paid from the city or town treasury, nor unless they are approved by the state board of charity or by a person designated by it;" . . .

Three questions seem to arise under this inquiry: First, is the Commonwealth entitled to go behind the indorsement of the city official and inquire whether the sums have been paid from the city treasury; second, has the state board of charity uncontrolled authority to approve or disapprove the bills; and, third, do the facts of this case show any, and, if so, what, reasonable expense incurred by the city of Cambridge.

(1) I am of opinion that the Commonwealth is entitled to find out as a fact what expenses have been incurred by the city by such evidence as can be obtained.

(2) The State Board of Charity has not uncontrolled authority to approve or disapprove bills of this nature presented by a city or town. It does not have, as a matter of law, the right to prevent the recovery by a city or town of the reasonable expenses incurred by it, and its approval is purely a question of administrative detail and precaution.

(3) Under the circumstances of this case I am of opinion that the charge of 1.18 made for two visits of the city physician to the poor person in question does not fall within the term "reasonable expense which is incurred by a city," and, consequently, should not be reimbursed by the Commonwealth; but that the charge of 35 cents for medicine given to the poor person is a reasonable expense incurred by the city and should be reimbursed by the Commonwealth.

It seems to me that any money actually paid out upon the approval of the city physician from the fund appropriated for his expense account is properly chargeable to the Commonwealth; but in my opinion the services of the city physician can in no just sense be said to be dependent upon the number or difficulty of the cases which he treats. He obtains a fixed salary which the city is bound to pay, no

matter how many patients he may treat, and is not paid for every individual case. Consequently, I am of opinion that the city has not incurred any expense by reason of the two visits of the city physician to the sick pauper in question.

Very truly yours,

(Signed) DANA MALONE,

*Attorney-General.*

It will not be denied that this is a necessary provision for the relief of the poor, and it ought not to be impossible to provide that a municipality furnishing it should be paid for that service. In fact, a bill to that effect is now pending in the General Court.

The law of divorce enters so constantly into questions that come before relief officers, that some reference to decisions under that law will be useful. It will be enough for the purposes of this work if the gist of the decision is stated, and reference given to the place where the details can be found. January, 1902, the Supreme Court decided, in the case of *Lottie E. Dunbar v. Horace B. Dunbar*, where the defendant sought to set aside a written agreement, made long before divorce, to pay her a certain amount monthly for separate support, that a later discharge in bankruptcy is no bar to the claim of the divorced wife.

April, 1902, Mary Lufkin, of Chelsea, widow of Richard, was allowed administration of her husband's estate, notwithstanding the evidence presented by the heirs that he had a wife living when he married her October, 1890.

The attention of the reader is called to the decision of the court, *Rawson v. Rawson*, page 70 of this book, where the court refuses to open the question of the validity of a marriage, when one of the parties to it is dead. But this appears to have been a question of the good faith and belief of Mary rather than of the fact.

Beyond all comparison the most important decision on this point that ever has been given by any American court was rendered by the United States Supreme Court, and reported in the *Boston Transcript* April 17, 1906. It occurred in the divorce proceedings of John W. and Harriet Haddock, and, in the opinion of one of the dissenting justices, it reverses the decision in *Atherton v. Atherton*, 1901. Haddock left his wife in three months after marriage in 1868, and in 1880 obtained a decree of divorce against her in Connecticut on the ground of her desertion. In 1899 she sued for divorce in New York, and a decree was granted to her on the ground of desertion, the court holding that the decree was invalid in the Connecticut suit, by reason of poor notice and lack of jurisdiction of both parties.

The question, of course, was on the construction of the clause which requires each State to give full faith and credit to the decisions of all the others, and nothing but a careful reading of the reasoning of the court by which it reaches the conclusion of the invalidity of the Connecticut decree can convey a sense of its importance. The effect of the decision is to overthrow the practices of the States that grant divorces on constructive residence, and to reaffirm the Massachusetts law and practice.

In the consideration of divorce and remarriage the attention of the reader is called to Section 6, Chapter 151, Revised Laws, and he is requested to read that section in connection with paragraph 250, page 169, of this book. It should have been noticed and mentioned when that comment was written, for the reason that it introduces a condition that modifies all the results of settlement derived by marriage. Perhaps, if it were called "an act to avert from women the effects of a marriage contracted without inquiry or counsel," it would be an accurate description, for there is no act in which women exercise less judgment or in which wise counsel has less effect, and it will be for women that nineteen-twentieths of the actions under this section will

be taken. It is stated in paragraph 250 that, pending the completion of the period between the temporary decree *nisi*, and the passing of the permanent decree, the parties are still for certain purposes as much husband and wife as though no action had ever been taken. For certain purposes, but not for all, as is constantly seen.

The language of this section is a little involved and hard to understand, and perhaps it will help to ascertain its true meaning if a case is stated in which it seems, to the lay mind, to apply. A man and wife, lawfully married, separate, and the wife applies for a divorce. A decree *nisi* issues, under which neither may marry until it becomes absolute, and he not for two years after it becomes absolute. But he does marry in two years after the decree *nisi* issues. If the second wife were to fall into distress immediately after this marriage, and needed pauper aid, proceedings under Section 11 of Chapter 151 would show that there was no legal marriage, and of course no settlement.

But if a year or two or even a month or two after the permanent decree is issued, and the husband may lawfully marry, the second wife falls into distress, this Section 6 comes in and declares that, if her action was taken in good faith, she shall be considered to have been lawfully married, and all children born to such marriage shall be deemed legitimate.

It will be noticed also that the same rule applies in case of a bigamous marriage, on the part of the man we will suppose again, and there the death of the former wife has the same effect that the decree absolute has in the other.

Apparently, this law does not affect those cases in which there was a second marriage after a decree *nisi*, with no subsequent action by the court, nor in the case of a double marriage, until after the death of the first wife.

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That the part now printed may lack no element of a supplementary character, the following answer to the epigram printed on page 64, received from an obliging friend, John M. Maloney, Esq., is here inserted:—



A woman having a settlement married a man with none,  
 He flies and leaves her destitute; —what now is to be done?  
 Quoth Ryder, the Chief Justice, "In spite of Sir John Pratt  
 You'll send her to the parish in which she was a brat.  
 Suspension of a settlement is not to be maintained,  
 That which she had at birth remains until another's gained."

It will be noticed that the Massachusetts law has always followed Chief Justice Ryder rather than Sir John Pratt.

The present opportunity is improved to correct the error by which the name of Sir John Pratt was first printed Sir *Charles* Pratt.

### CONTAGIOUS DISEASES.

Chapter 75, Section 57, modified by Chap. 213, Acts of 1902, contains the law relating to expense connected with contagious disease which falls within the settlement law, and it is assumed that all officers in the municipal Boards of Health are familiar with its provisions.

The first word in the section is such an unusual departure from a practice otherwise nearly uniform, in the provisions of the law, that it cannot be changed too soon.

Plainly, the purpose of the authors of the statute book is to make its provisions so plain that there cannot be two opinions as to the meaning of any indicated word. Where two men approach a question with opposed interests, its purpose is to enable both to see, by language not to be misunderstood, the rights and the obligations of both. Before all things it discourages litigation founded on equivocal language.

What is a "reasonable" expense? Can any man imagine two town officers, with opposite interests, answering this question in the same way, when passing upon the items of a given bill? The very first case of any considerable expense that occurred under this law showed the irre-

pressible conflict. In February, 1902, Haverhill and Marlborough, 187 Mass. 150, disagreed as to nearly every item in the bill of the former for two small-pox cases.

The opinion of Attorney-General Herbert Parker, given to the Board of State Charities in 1905, will be found to be a very helpful guide to Boards of Health, and it is here printed in full:—

#### ATTORNEY-GENERAL'S OPINION.

BOSTON, April 10, 1905.

J. F. LEWIS, M.D., *Superintendent State Adult Poor*:

*Dear Sir*,—In your letter of February 17, you submit for my consideration the following statements of fact.

(a) A child ill with diphtheria; the local board of health was duly notified of the existence of the disease, its agents entered upon the premises and posted the usual cards of warning at the entrances, that a dangerous disease existed therein, and established a semi-quarantine of the household. A physician was sent by the board, who obtained a culture from the throat of the child, and the case was diagnosed to be diphtheria. Notice was sent by the local board to the State Board of Health, as provided by section 52, chapter 75, of the Revised Laws. The local board of health declined to further relieve or provide for the care of the case, and called upon the overseers of the poor to assume its care and support.

(b) A case of scarlet fever; the wife and some of the children had settlements in a town other than that in which they were living when the sickness occurred. The husband and some children by a former wife had no settlements. The local board of health had exclusive control of the case and sent the bill for the entire expense to the board of health of the town wherein the wife had a legal settlement. The board of health refused to pay the bill, claiming that the overseers of the poor should reimburse said town from its appropriation for the maintenance of the poor.

In view of these facts, you request my opinion upon the following questions:—

1. What constitutes action by a board of health, within the meaning of section 15 of chapter 75 of the Revised Laws?

2. Which board should reimburse for the expenses incurred in the care of cases of contagious diseases, under the provisions of chapter 75 of the Revised Laws, as amended by chapter 213 of the Acts of 1902?

3. Which of these boards should be recognized by the State Board of Charity in the approval of claims for reimbursement for expenses incurred in the care of such cases?

The duty to care for persons infected with diseases dangerous to the public health is imposed upon local boards of health by Revised Laws, chapter 75, section 42.

"If a disease which is dangerous to the public health breaks out in a town, or if a person is infected or lately has been infected with such disease, the board shall immediately provide such hospital or place of reception, and such nurses and other assistants and necessities, as is judged best for his accommodation and for the safety of the inhabitants, which shall be subject to the regulations of the board. The board may cause any sick or infected person to be removed thereto, if it can be done without danger to his health; otherwise the house or place in which he remains shall be considered as a hospital, and all persons residing in or in any way connected therewith shall be subject to the regulations of the board, and, if necessary, persons in the neighborhood may be removed."

In section 43, it is further provided that:—

"If such disease exists in a town, the selectmen and board of health shall use all possible care to prevent the spread of the infection, and shall give a public notice of infected places to travellers by displaying red flags at proper distances and by all other means which in their judgment may be most effectual for the common safety." . . .

Section 15 provides:—

"The board of health of a city or town shall, to the exclusion of the overseers of the poor, retain charge of any

case arising under the provisions of this chapter in which it shall have acted."

Acts of 1902, chapter 213, repealing section 57 of chapter 75 of the Revised Laws, provides:—

"SECTION 1. Reasonable expenses incurred by the board of health of a city or town in making the provision required by law for persons infected with the smallpox or other disease dangerous to the public health shall be paid by such person or his parents, if he or they be able to pay, otherwise by the city or town in which he has a legal settlement, upon the approval of the bill by the board of health of such city or town and such settlements shall be determined by the overseers of the poor. If the person has no settlement such expense shall be paid by the commonwealth, upon approval of bills therefor by the state board of charity. . . .

"SECTION 2. No person for whose care and maintenance a city or town or the commonwealth has incurred expense in consequence of smallpox, scarlet fever, diphtheria or other disease dangerous to the public health shall be deemed to be a pauper by reason of such expenditure." . . .

Diphtheria and scarlet fever are clearly diseases dangerous to the public health, within the meaning of sections 42 and 43 of chapter 75 of the Revised Laws. Any case of diphtheria or scarlet fever, therefore, is a "case arising under the provisions of this chapter," within the meaning of section 15. It becomes important, then, to determine whether or not the cases submitted are cases in which the board of health "shall have acted." This language is broad enough to include the doing of anything under authority of sections 42 or 43 in connection with a specific case. It might, it is true, be argued that the use of the words "retain charge" in section 15 indicates that such section does not apply until the board of health has taken complete charge of a case. The use of the words "have acted," however, instead of the words "have taken charge," indicates that the slightest act on the part of the board of health is to determine the control of the case. In case *a*, the posting of cards of warning and the taking of cultures from the throat of the child

were acts done under authority of Revised Laws, chapter 75, sections 42 and 43; consequently the board of health had acted in the case and had come into control of it to the exclusion of the overseers of the poor. In case *b*, the board of health had acted, and it follows that such board had exclusive control of the case.

The second question had to do with the reimbursement of a town represented by its board of health, for the care of a person not settled therein. It is raised in case *b* only. I assume that the persons were not paupers before falling ill. The wife had a settlement in another town; the husband had no settlement. Under the provisions of Acts of 1902, chapter 213, the town should be reimbursed for the care of the wife and the children having the same settlement as she had, by the town of her settlement. It should be reimbursed for the care of the husband and the children having no settlement directly by the commonwealth. The provision of section 16 of chapter 85 of the Revised Laws, to the effect that a state pauper shall be supported by the town wherein his wife has a settlement, applies only to state paupers, and is therefore not applicable to this case, since relief furnished by the board of health does not pauperize (Acts of 1902, chapter 213, section 2), and it does not appear that the persons in question were already paupers.

The third question is as to whether the State Board of Charity should recognize the board of health or the overseers of the poor in the approval of claims for reimbursement. Since the expenditure should have been made by the board of health, such board should be recognized in the matter of reimbursement.

Yours very truly,

HERBERT PARKER,

*Attorney-General.*

The above-mentioned decision of the Supreme Court in 1905 cleared the air to some extent by making it certain that quarantine measures for the protection of the health of the inhabitants of Haverhill were not collectible from



Marlborough, but these precautions were none the less the occasion of reasonable and necessary expenses, although excluded from charges to the place of settlement by the decision. The next case will raise the question on other items, and, as long as that evasive word continues in authority, towns must fall out and go to law.

It is easy to imagine a case, likely to occur at any time, that will set forth the inexpediency of the present provision in the strongest light. A suburban hospital agrees to receive patients at \$14 per week, and the overseers of the poor of the next town bring to its door a man suddenly taken sick and needing immediate care.

The patient is received without special examination and without any talk of increase of the regular rate. Upon examination by the house physician a suspicion of small-pox is started, and it is confirmed by the consulting physician. Thereupon the Board of Health of the town in which the hospital is situated is called to take charge of the case, and duly notifies the Board of Health of the town from which the man came. The patient dies in a little more than twenty-four hours after admission, and then a small-pox expert is brought, at a large expense, to confirm the diagnosis. He decides that there was no small-pox in the case, and that the man died of glanders. For the imaginary precautions necessary to be taken, by reason of a mistake, the isolations, the fumigations, and the lavations of wards, the expense would be more than \$150, and not a member of the Board of Health in the hospital town would have the least doubt that every item was “reasonable.”

On the other hand, the Board of Health of the defendant town would see at once that, even if the hospital could charge more than the regular rate, nine-tenths of the expense was in the nature of quarantine precaution, that more than one-half was incurred after the patient was dead

and beyond human help or hindrance, and that one-tenth of the charge should have secured to him all necessary aid.

In regard to small-pox this question goes much deeper than would at first appear. Probably any unprejudiced expert jury of doctors would testify that fully three-quarters of the medical and nursing expense in an average small-pox case, is of no possible advantage to the patient or to the community. With certain hygienic conditions secured, there is no equally severe disease that is less affected by outside influences than small-pox, or that can profit less from constant visits. It has its stages of progress, and the best doctor and the most skilful nurse can do no more than to announce the advent of the successive periods. It must increase, and run a course, and decline, and the crusts must detach themselves, all by a rule as immutable as that by which the sun rises and sets, and the doctors are only attendants upon a process that they cannot assist or direct. As evidence in the question under consideration, the writer cannot forbear to make some allusion to his three personal associations with this disease, because all have a bearing on the question under discussion. The first was in the winter of 1852-53, when there were ten cases of small-pox in Sudbury, of which his own was one. These cases, among which were two deaths, were all among persons in very moderate circumstances, mostly poor men, and yet there was not one cent of public expense in the whole. The writer occupied an airy chamber in his father's house, with never a cent for nurse, or for any expense only the five or six perfunctory visits of the doctor. The scales were one by one detached, and the patient went his way, after two months' imprisonment.

Twenty years later occurred the great 1872 epidemic, in which it fell to the lot of the writer to investigate the settlement of more than one hundred cases in and near Boston.

The bills for these cases all passed through the office of the late Dr. Henry B. Wheelwright, and it is far within the truth to say that the average of the bills as presented was less than \$100 each. The recent history of the last outbreak, with its details of extortion and inflation, is still fresh in memory. Allusion has been made to one of its manifestations, and it is quite certain that the average of charges, in all the cases, was five or six times what it was thirty years before, and that, too, in spite of the fact that the cases were not more severe in one than in the other. One case may be mentioned, not wholly lacking in a certain element of humor, though it is quite possible that the town of settlement did not laugh uncontrollably on learning the details.

Two members of a suburban Board of Health travelled north and south for a trained nurse, neither knowing of the mission of the other. Both were successful, and returned with a nurse, one at \$40 a week and the other at \$30 a week. As both were not needed, both were discharged, and the member explained to a questioner that he "compromised" the matter by hiring another nurse at \$75 per week. Any one of the three was as necessary in that hospital, at that time, as a translator of Sanskrit.

During the epidemic the writer was sent to a hospital north of Boston, to see a convalescent patient having a settlement in an adjoining town. It was an early summer day, and the man came out of the hospital and sat bare-headed on the fallen tree before the door, while the history was taken. The trained nurse was still in attendance, as well as the cook and the general helper; and the doctor was still attending every alternate day. Why all this was so was perhaps explained on the principle of the good old Vermont deacon who kept a ram moored at the watering-tub near the back door, night and day, he being under a strait

vow to abstain from the use of rum only at sheep-washings. In these epidemics we hear much of the hardships that doctors undergo in the way of isolation and the loss of other business. There is no doubt that the unreasoning panic that possesses the popular mind in a case of small-pox does occasion much inconvenience and loss to a doctor in full business, and it is only from a sense of duty that such cases are undertaken. Probably any doctor in full practice would be glad if no such cases came to him, but neither theoretically nor as a matter of fact is there any such isolation as is sometimes believed. Probably it would be impossible to find any doctor in the late epidemic who did not sleep in his own bed, and eat at his own table through the whole, and in the senseless extortion that is practised by nurses and countenanced by the public, in the fortnight of idleness that is paid for, after attendance on a case of small-pox or diphtheria, the wrong is still more manifest. If it is dangerous to the public health for these nurses to take a new employment without a period of purifying quarantine, why do the young women of the South Department of the Boston City Hospital leave the diphtheria-saturated wards after a careful sterilizing ablution of face and hands and hair, and walk in crowded public places, with proved safety of the people whom they meet?

It is only fair to say that the employment of trained nurses finds its greatest use in cases of diphtheria.

If it is important that some maximum limit of charge should be established in small-pox cases which do not come oftener than in twenty-year intervals, and in diphtheria cases that may not occur in less than ten years' space, it is imperative that such a limit shall be set in the case of pulmonary consumption, which is now a disease in the jurisdiction of Boards of Health. Every town in the Commonwealth must always have one such case all the time; and, the sooner

equitable limits of charge are established, the better for all. The emergency in these cases can never be greater than that which overseers of the poor meet, or may meet, every day, and there is no reason why the limitation of expense in the charges that can be made by one town against another, which experience has proved to be necessary, should not also apply here. Especially is this the fact when we remember that the clause which provides that none of these Board of Health cases shall be pauper cases, probably takes away the right of compulsory removal in cases of extortionate charge.

It is now almost one hundred years since it was found necessary to pass a law that, if the overseers of the poor of the town of settlement should, within thirty days after notice, move a person receiving aid in another town, to the place of settlement, it could be held for no more than one dollar a week, and that is the present provision of Chapter 81, Section 19, of the Revised Laws, only that the amount is now two dollars a week. It makes no difference that the aiding town has been obliged to pay for a capital operation or any other unavoidable expense: it can collect no more than the amount named, if the dependent is moved within thirty days.

The reasons for this limitation are not far to seek. It is within daily observation that a man who has more than enough of his own and of his town business to do, will not spend so much time to make a good bargain for another town as he is sure to do when he knows that his own town has a vital concern in the trade. And when the statute limit is reached or passed, if a nurse seeking engagements or a doctor not driven with business were to make the case too long, the town officer would have a motive for plain speaking that is wanting so long as the word "reasonable" remains on the statute.

This question should be approached without thinking



of its bearing on any single case or group of cases, and settled on a basis that concerns nothing less than the good of the whole State.

The debtor to-day is the creditor to-morrow, and, however it may seem at the moment, it is only the equitable thing that is permanently good. Therefore, in cases cared for outside permanent hospitals, if fifty dollars per week were made the maximum possible charge in cases of diphtheria, and thirty-five dollars a week in small-pox cases, and twenty dollars a week in phthisis pulmonalis or other forms of tuberculosis, the necessary conditions of humanity and the best results could be secured, as the latter is a disease requiring observation rather than regular attendance.

Boards of Health will so often need to consider the removal of incipient cases of phthisis to a sanatorium, that the following remarks upon those institutions may prove to be useful and interesting. In reading them, it is always to be kept in mind that they are written in no spirit of captious detraction, but with a sincere purpose to represent the facts, and to give the reader some of the advantages of a personal investigation that he has not made. The author is much more familiar with Rutland than with Sharon, though he believes that his remarks are equally applicable to both. Rutland certainly has the advantage over Sharon that the raw east winds lose some of their sting as they sweep over the Worcester hills, and also in the greater distance from Boston, and, through that distance, in the diminished temptation to lose in a week's visit all that has been gained in three months.

It is now nearly ten years since personal visits to Rutland enabled the author to form some idea of its work and of its prospects. No person can yet speak with authority as to the final outcome of the work done there, and it is only in the fully prepared chart of all the cases which have entered

the institution from the first, which may be made not sooner than 1925, that anything having permanent value can be known. Rutland seeks to begin its work in the very earliest stages of invasion, before the assimilating processes have been weakened, and while the reparative conditions are at their best. Perhaps the time may come when the disease will be detected so early that immediate permanent cure will be complete. But at present the word "cure" means hardly more than arrest. The disease ceases to advance, it ceases to threaten to advance, it is side-tracked. It is quite possible that the authorities at Rutland may know of cases that have gone from there into their former occupations, and have worked three, four, or five years without breakdown or sign of returning disease.

It has not been the fortune of the writer to see one such case. The pulse, perhaps ten faster in the minute than natural, sharp and weak, the respiration quickened, the facial color flushed with the least unusual exercise,—these all tell a story that increased weight and the most sanguine belief in absolute cure cannot quite dispel.

Nine years ago six Spanish War soldier boys were found to have received all the advantage that Rutland could give them, and they were marked for discharge. As one after the other came from the baseball field to meet the visitor, it was hard to believe that these athletic persons could even have been thought to have a mortal disease. But they all had the sharp high pulse.

Dr. Marcley was asked what he thought of the ultimate prognosis of the most hopeful of these young men, and he answered, "If H. B. lives in the right place, in the right way, and takes care of himself, I see no reason why he may not live on to old age."

It is quite certain that all of these six young men are now dead, and that all died of the disease for which they were

admitted to Rutland. Perhaps none of them lived in exactly the right way, though H. B. died in Rutland.

"In exactly the right way" sometimes implies an impossible condition, as that one shall live without labor or care. Thus a Boston boss-mechanic passed through the sanatorium, came out with his disease arrested, and bade fair to live for many years in the cottage that he had built for him on one of the Rutland hills. In an evil hour he undertook to superintend some mason-work in Rutland that implied care and responsibility, but not hard work. He accepted the place, but before the work was done he was in his grave.

In considering the question of treatment in a sanatorium or out-hospital, it must never be forgotten that the going to such a place is not an unmixed good. The patient who fondly hopes that he has left his disabilities at home finds that there is no magic change in conditions, and that he has brought all his troubles with him, leaving none behind. If he imagines that there is some renewing quality in Rutland air that is lacking at home, he soon discovers that what the apostle calls "the body of this death" is still with him. There are few towns in the eastern part of the State in which there are not spots as favorable for a house-site in which a tuberculosis patient might take the treatment as any in Rutland, and in both the same question confronts the patient, which none but himself can answer: Can he and will he conform to the conditions that are indispensable to his improvement? Wherever he is, the saying of the physician in *Macbeth* will still confront him, and whether at home or in the sanatorium the case of the patient who cannot or will not minister to himself is hopeless from the beginning. This is not to say that it is not much easier for the patient to do this in Rutland, where his feeble will is reinforced by the commands of an expert medical adviser and the help of a skilful nurse.

But the deadly stress that comes upon young persons who go into exile to fight their battle alone, with its weight of depressing homesickness, makes a consideration of the advantages and losses of sanatorium treatment, as compared with treatment at home, a pressing duty. The sanatorium does its best, by musical and literary and social exercises, to ward off the depressing influences which seem to be almost inevitable in a place where sickness is the normal condition, and with good success; but in the long nights, when human sympathy and help are suspended and the patient lies with the sounds of the trouble of his associates always in his ears, there must surely be some discount on the good that is gained in daylight hours.

And when one stands on the steps of Rutland or Muschopauge station, with the return train approaching, and sees the poor mother striving to put on a brave face and to keep back her tears, and the daughter turning to face her fate alone, he feels that there is a parting compared with which death may be merciful, and that, if the advantages of the treatment could be secured at home, it would often be a great gain.

The physician in attendance is surely the best judge as to the place where the treatment shall be undertaken, and it is only where for any reason his opinion cannot be had, and where the decision must be left to a non-medical town officer, that the following suggestions are offered.

It must not be forgotten that the thought of going away from home to escape disease is very old, and is based on the crude idea that disease is a living concrete enemy, like a rattlesnake or a scorpion. The amount of misery that men have suffered in the hope of escaping from the presence of the enemy by retreat can never be computed. Sixty years ago they were sent to St. Augustine in Florida, and there were borne down by the loss of all those domestic

conveniences which was a part of Southern civilization under the slave system. Now they are advised to exile themselves in Dakota, though the physicians there write that, even if one can command \$16 a week, he must still accept such provision as can be brought from many miles away; while a case that can spare no more than \$5 a week must find refuge in the county almshouses, if he can find a vacancy in one.

There is no doubt that, when a patient applies, the very first most pressing duty often is to move him from his home, because it is so damp and ill-ventilated that no improvement is possible while he lives there. Even if the location of the home is ideal, many conditions there may render improvement impossible, such as unkind indifference, on the one hand, or enervating pity and coddling, on the other.

Thus the question must always be between the local disadvantages of the home and of the sanatorium.

The boarding-houses in Rutland, which maintain more patients than are in the Sanatorium, at rates ranging from five to twenty dollars a week, attempt to keep their patrons, in a greater or less degree, under the same rules of treatment that are in force at the Sanatorium. They are largely under the direction of skilled physicians who have been connected with the Sanatorium, and, while their inmates are principally those who have been through the Sanatorium and are considered to have passed the curable stage, there are some who come to them hoping to qualify themselves, by a special care, for admission. In some of these places the weak will of the patients, which would allow them to shirk the continuous outdoor exposure between breakfast and dinner, is reinforced by the turning of the key on them, so that one finds them bunched on the piazza, as flies huddle in sunny corners after the frost comes.

The visitor who goes to Rutland for the first time can



form some idea of the surprise with which a newly arrived patient, fresh from the coddling of home, becomes acquainted with the new conditions. He has supposed that he must avoid all liability to "taking cold," and especially all exposures to dampness. He now discovers that he has come into a community of invalids who no longer know the meaning of the phrase that signifies so much to him. Even if it is early spring and the unsettled ways are muddy with the sticky clay, he will see, in groups of two and three, with the mud sticking to the stout shoes, young men and women, without umbrellas, faring along with a joke among themselves and a smile to the passenger they meet, while the April shower and sun alternate and seem equally welcome.

There is a uniform testimony that the young women are more faithful and trustworthy in carrying out the details of the treatment than the men. If one goes up along the by-paths on the woody side-hill in the rear of the Sanatorium, he comes continually upon roofed benches, opening to the south, on which the patients sit in the open air for hours at a time, oblivious to temperature, with no artificial heat; and, if the visitor comes to the Sanatorium on a zero day, he will find the open platform communicating with one of the wards for females, covered with Morris chairs, on which lie the patients, covered with robes of many hues, which give to the scene the blare of color that one sees in a geranium bed in September.

In thus setting forth the comparative advantages and disadvantages of sanatorium treatment, it is hoped that no purpose to disparage the results of the outdoor treatment of consumption, at Rutland or at home, will be seen or inferred. If the writer has not yet been able to see all the results that the more hopeful advocates claim, he will always be among the first to recognize the advantages that have come to all in emancipation from the crude ideas of

fifty years ago. Even if absolute restoration to usefulness and long life should not be secured, the art that rescues a beloved daughter or son from imminent death, and preserves them still to be a light and comfort in declining age, though still as invalids, should command our hearty support and our warmest praise.

Meantime it is necessary to remember that there is no hard-and-fast rule applicable to all cases, but that each must be decided according to the special conditions.

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The settlement investigations of the agents of the Boards of Health will so often lie among the families which require poor-relief, also, that it is strongly urged upon the notice of such visitors that they read carefully the suggestions to visitors among the poor, in the first part of this book, between pages 11 and 22.

Even if they should have no curiosity to break into that "mighty maze, but not without a plan," the settlement laws of Massachusetts, it will still be true that the methods of investigation which the experience of more than thirty-five years has more and more commended will be of commanding importance to them.

It is only by respecting the rights of the poor, and by care to make them see that the visitor assumes no superiority over them, except for such guidance as they need, that he will gain access to them and be in any degree successful in his work.

When the Statute of 1902 directs that overseers of the poor shall "determine" the settlement, does it mean that they shall send an agent, perhaps at large expense, or simply that they shall pass, as skilled experts, on facts gathered by the board of health. At present we can go no farther than the opinion of a suburban city solicitor that the latter construction is right.

## SOLDIERS' AID.

In compiling the following observations on the laws relating to soldiers' aid, every precaution has been used to make the facts and principles set forth clear and accurate. It would be too much to hope, perhaps, that no error will be found in any of the statements made, because that result could be attained only by the securing of advice and direction that the writer has no means of commanding.

The remarks that follow, therefore, are not to be considered as coming with authority or even approval from any person connected with the execution of these laws.

They have no such force or effect, but are only such comments and suggestions as would readily occur to any non-professional person who should make a careful study of the laws.

But, when a fact of routine or practice is definitely stated pertaining to the administration of the law, it is believed that no important error will be discovered.

It is hoped that by paying careful attention to what follows, persons entirely unfamiliar with the details of the law may find little difficulty in carrying out its provisions.

The experienced official who looks over these pages will probably find no single statement of principle or action with which he is unfamiliar.

But, if he will remember at what a cost of study and of questioning, sometimes of mistake and trouble to himself and to his town, he reached his present condition, he will not think this attempt to aid the late comers useless or unnecessary.

The continued questioning that comes to the office of the Commissioner, and that is addressed to the agents on their visits, demonstrates the necessity of some aid in the perform-

ance of daily duty, and it is hoped that the following pages will in some degree meet the demand.

Soldiers have all the rights of citizens and some added privileges. These privileges are held subject to the conditions that they conduct themselves as worthy citizens, and that they can make good and proper use of the special advantages given to reputable ex-soldiers.

Some persons who have a good military record seem to believe, and in some cases to make the town officers believe, that they have acquired certain inalienable rights, by their honorable service that no subsequent misconduct can affect. We often hear such statements as this: "I am a soldier, and you cannot put me in an almshouse."

The limits of action in such cases will be more fully considered when the special clauses of the soldiers' aid laws are separately considered, and it is unnecessary to say here more than that this view of the situation is entirely incorrect. Soldiers do not hold their gratuities by any higher tenure than that by which our judges hold their offices, and that is during good behavior.

There are three forms of aid that a needy soldier can receive. From the State he may receive State Aid, payable in the place of residence; and from the town of settlement military Aid and soldiers' relief, and his wife can have the first and last under certain conditions to be named later, and his widow the first and last under certain conditions, neither wife nor widow being eligible to military aid at any time.

For convenient reference the law found in Chapter 79 of the Revised Laws should be kept in mind, and the official ruling of the Commissioner as to eligibility which was printed in connection with the last codification of the law in 1904 is herewith printed:—

## “STATE AND MILITARY AID, AND SOLDIERS’ RELIEF.

“State Aid is not a pension, to which every one disabled in the war is entitled. It is not for the rich and well-to-do in the world, nor is it for the idler, the criminal, or the profligate. It is not intended as an encouragement to pauperism, nor as a reward to self-ruined manhood. It is not enough that the applicant was faithful in his military or naval service during the war. He must be at the present time a worthy citizen of the Commonwealth, and in such necessitous circumstances as to need assistance. He must be a producer, unless disabled by his service, or by disease or the infirmities of age, and contribute his share to the moral and material wealth of the State. The laws make the municipal authorities the watchful guardians of the unfortunate and needy soldiers in their respective localities, and require that they shall be vigilant and humane in their treatment of them.

“Relief is provided only in cases where the person is ‘not competent to support himself or herself,’ either from earnings or from property or income of any kind. It undertakes to relieve certain defined classes of soldiers and sailors and their dependents, who fall into necessitous circumstances, while they continue in such condition. The law of 1878 has been abused by paying the maximum amount in all cases. It has been taken for granted that, when aid was allowed, the largest amount possible was to be given, whether the recipient needed it all or not; but the law is that not more than certain specified amounts shall be paid. If *less* will relieve the person’s necessity, the law requires that less be given.

“If in any month the aid is not needed, the law requires



that it shall not be paid. The act requires that the money be paid for *future* benefit. This is intended to prevent its payment to settle debts or bills incurred for past necessities. It is not to be construed to be for *remote* future benefit, but to provide means to be used for the beneficiary to relieve his present necessity.

“Under no circumstances must the aid be paid, under this law, to any person not *actually residing* in the city or town where the aid is paid, at the time of said payment; and, should such recipient remove from one city or town to another, a new application and certificate of reasons must be made, stating where aid was last paid and for which month.”

It is not necessary to comment on each provision of all the sections of the law, as each explains itself, after careful reading, so that no further guide will be needed by those who are called upon to execute its provisions. One detail common to all the three forms of aid and indispensable to all, cannot be too firmly impressed, and that is, the necessity of an honorable discharge from all enlistments. This can be proved by a certificate of service from the office of the Adjutant-General at the State House, Boston, or, if there is a second or third service for which that office has no final discharge, from the office of the United States Adjutant-General at Washington.

Another requirement common to all is that the soldier shall really stand in need of the aid asked. It is not intended by the law nor enforced by the rulings of the Commissioner that the honorable soldier shall come down to the level of a pauper before asking for public aid, or that he shall receive it only in a sufficient amount to keep him barely outside that class. Nor is it intended that he shall receive it so as to prevent him from doing everything in his power toward

his own support, both in the matter of earnings and of prudent use of his means. The bountiful provision made by the State for the benefit of her faithful soldiers is doubtless in some sense a reward, but it is not in any sense an estate, in the same way that the government pension is. It is simply a provision outside the pauper law for the benefit of persons who might otherwise fall into the pauper class. It is not properly given to a man to save up against a time which may never come, in which he can no longer earn, but because he now needs it. It is only when such conditions exist that aid should be begun, and it is only while they last that it should be continued.

Soldiers have not been found to prove an exception to the law that persons who have once received public aid find it hard to see why they should not continue to have it, and they, like all public beneficiaries, come to look upon the bounty of the State as a permanent addition, and not as a gratuity given for an emergency.

In the State Aid payments there is more danger that town officers may fall into the same careless way of looking at the allowance, and thus may give too much or for too long a time, by the fact that they act only as the agents of the State, and are paid back in full, while in both the other divisions the treasury of the town is directly interested.

In a larger sense the treasury of each town that pays State Aid is directly interested, by reason of the fact that the money refunded to the town by the State, originally came from the town in the form of a State tax, but that fact is quite forgotten in deference to the public sentiment which countenances a large liberality at the expense of the State.

Another qualification for aid under the military laws, not quite so sweeping as that relating to honorable discharge, is that which requires actual service in the Massachusetts quota. The middle part of Section 3 of Chapter 79 names

several classes of invalid pensioners who may have State Aid, although they were not counted on the Massachusetts quota. While it is very likely that many town officers may never have to deal with one of these exceptional cases, it may be worth while to give the historical reasons why they appear on the list in exception to the general rule. At the time when these men enlisted between April, 1861, and March, 1862, men were offering in larger numbers than could be organized at once, and thus many persons went outside the State to join bodies that were forming there, because they would not wait for the organization of regiments here.

It is within the knowledge of persons now living that the 40th New York Mozart Regiment was thus largely composed of Massachusetts men. These men have been recognized as our men in all legislation since the war. In each of these cases it is a question whether the soldier or sailor had his home in the State at the time of enlistment, and in these as in all other cases the tendency of the Commissioner of State Aid is to give the benefit of reasonable doubt to the applicant.

In a recent case of a sailor who enlisted in the navy early in 1862, at San Francisco, the evidence showed him to be a single man, whose widowed mother lived in Boston, and that he had no home other than with her. It further appeared that he often visited her between cruises, and on this evidence he was adjudged eligible to State Aid.

At the end of the section under consideration certain sailors are considered who are eligible to State Aid on account of enlistment during the war at a later date than that mentioned above, as well as during that time, if actual residents of the State at time of enlistment, and regular army soldiers are also included under the same conditions.

But in all these cases the Commissioner requires the affi-

davit of two credible witnesses to identity, and to the fact of residence at the time of enlistment. The question of pauper settlement does not arise under the State Aid clause as it does under the other two. If a man pensioned or pensionable and otherwise eligible to State Aid comes to any town in the State to live, he may receive State Aid at once, although he never lived there before.

#### SPECIAL PROVISIONS REGARDING STATE AID.

A soldier may receive as State Aid any sum per month recommended by the town authorities and approved by the Commissioner, up to six dollars per month, which is the largest amount of State Aid allowed. There is a bill now before the General Court providing for making this amount nine dollars per month, but adverse action has been taken upon it.

Although by the terms of the law State Aid is given to married soldiers only when living in marital relations, it is not refused nor suspended when the wife leaves home without justifiable cause, and it is often given to the wife, on application of the husband, when he is temporarily away, as in a Soldiers' Home, where he himself could not receive it, on account of being out of the State. If his wife is living in marital relations with him and she needs aid, she may, upon the application of the husband, receive not more than four dollars per month at the same time, upon the application of the husband, with recommendation of the town authorities and the approval of the Commissioner, if they were married before his final discharge from the service. If she married him after his discharge, but before June 27, 1890, she will not be eligible to State Aid during his lifetime, but as his widow will be eligible to not more than four dollars if she needs it, upon proof of her marriage

and of the death of her husband. A bill is now before the General Court repealing the time limit, and making all widows of soldiers eligible to State Aid, but it has not received the favorable report of the committee.

A construction of the law most favorable to the widow of a soldier has been made by the Commissioner, by which she, having lost her pension by marriage to a civilian after the death of her soldier husband, is allowed to revive her claim to State Aid after the death of the civilian husband, as though she had continued to be the widow of the soldier.

Actual residence is one of the conditions of the payment of State Aid, and it is one of the regulations the most difficult to enforce. As the law reads, a change of residence implies a change of paymaster, and it would seem that in no other way can the proper oversight of cases be maintained than by the applicant residing in the place where he or she is paid. The question seems simple enough, but in reality is very complicated. Often the selectmen have little personal knowledge of their cases, and, when they have drawn their order for the payment at the last of the month, for the past month, they hand their schedule over to the town treasurer, and he makes the payments generally, or too often, without knowledge of actual residence on the part of the selectmen.

Cases are known in which checks in payment have been mailed out of the State, in direct violation of the law, and it is not at all rare that a check mailed from one part of the paying town to another part six miles away, is taken from the office by a son or daughter, and remailed to a parent in some other town. Another case, not so bad as these, is where a widow of a soldier finds it necessary to shut up her house where she lives alone, in the town of her residence, and to go to her daughter who lives in the next town, in the winter. In F. where she lives she can run to the



office of the treasurer from her house in five minutes, while in C., after the trouble of transfer, she must ride six miles through the sand to the treasurer's office. She knows she shall go back to F. in the spring, so why should she not have the money sent to her by mail to C. through the winter?

The answer to all this is that there is no salutary law that does not make some inconvenience somewhere, and on the ground of the greatest good to the greatest number it is clearly expedient that the old lady should suffer a temporary inconvenience rather than that checks should be sent by mail to persons not living in the State.

But, as a matter of practice, there is no such dilemma as this, but there is a safe and sure intermediate way that reaches the end without hardship to any person. If the selectmen of F. write to the Commissioner in November that Mrs. Blank wishes to spend the winter on a visit to her daughter and to have the payment of her aid temporarily suspended in her absence, he will probably authorize them to suspend until her return, not later than April, and then to charge and pay the whole in that month. In cases of change of residence by soldiers or widows of soldiers, it is advisable for the officers of the town from which the removal takes place to write a note to the officers of the other town, setting forth the fact in regard to the aid that has been paid, as to amount and time of last payment, and then a new application is forwarded by the town to which removal has taken place, as though the case had not before been aided, for the approval of the Commissioner, and with that goes the sworn certificate of reasons, setting forth the facts in the new residence.

## MILITARY AID.

This is a form of aid given where by reason of sickness or other necessity, the pension and State Aid prove insufficient for the proper support of the soldier. State Aid is then withdrawn, and military aid is substituted, as these two are never paid together. But in a case where husband and wife are drawing State Aid and his is withdrawn by reason of the substitution of military aid, there would probably be no objection to the continuance of her State Aid if it were needed. In the case of the withdrawal of State Aid and the substitution of military aid, the question of pauper settlement first arises, because half the military aid given under this law is chargeable to the town of settlement, if the applicant has a settlement, and half to the State.

But, where there is no settlement in the State, all the military aid is charged, by the town giving the aid, to the State.

As in the consideration of the provisions for the payment of State Aid and soldiers' relief it is assumed that these pages are for the benefit of one entirely unfamiliar with the law, it is believed that a running commentary on the special details of the military aid law may be useful.

First Class. Applicants for military aid are placed in the first class, if they are in the first class of Section 3 in the State Aid law so far as time of enlistment, service on Massachusetts quota and discharge are concerned. But soldiers in receipt of pension cannot be placed in Class One for military aid, but must be placed in Class Two if they need military aid. As under the act of February 7, 1907, every honorably discharged soldier who served ninety days, and who is sixty-two years old, is pensioned or pensionable, the number of persons who will appear in Class One will

soon be very small, and will practically be confined to those who served less than ninety days and who are adjudged eligible to State Aid, even if serving less than ninety days.

No greater or less amount of military aid is secured by placing an applicant in any special class, but each case is decided with reference to its special conditions.

It is easy to confuse the phrase "town aiding him," in the qualifications for aid in the first and second class, with the idea of association with the town from which he has been receiving State Aid up to the time that military aid is substituted, but, as set forth below, that error must be carefully avoided. "Town aiding him" means town that is to aid him under this law, which is the town of settlement, and that may or may not be the town in which he lives and which is now giving him State Aid.

Class Two differs from Class One only in the fact that soldiers who receive or may receive a pension come within its provisions when pension and State Aid are insufficient for the soldier's comfortable support and when his condition is such that he would otherwise have to be supported under the pauper law.

It is not more for the advantage or disadvantage of a soldier or sailor to be aided in Class One or in Class Two, for he may receive all that he needs in either class and no more than that in either. The presumption would be, of course, that if he is in receipt of a pension, and so aided in Class Two, he will not need so much military aid as he would if he were in Class One and without a pension. The pension is always to be reckoned as a part of his income, which is necessarily to be applied to the support of the applicant, and not, as some pensioners are inclined to regard it, as a piece of personal property which they may use without accountability to any one.

In that point of view it is clear that when two applicants

present themselves, having equal needs, the man in Class Two, receiving twelve dollars per month pension, should need twelve dollars a month less military aid, than the other.

Class Three provides for unpensioned soldiers, who also have no pauper settlement. If a man who was in the service less than ninety days in the Civil War, or who was ineligible for pension in the Spanish War, were to move into this State from some other, neither he nor his ancestors having lived here before, he will not be entitled to receive this aid until he has lived three years successively in this State, the whole time immediately preceding his application. When it is given to him, it will be in the town where he then lives, and the whole amount will be at the charge of the State.

Class Four provides for an out-of-the-State unsettled applicant who differs from the last mentioned only in the fact of having a pension. He also must be in the State three years before he is eligible, and his military aid, given by the town where he lives, must all be refunded by the State, unless he shall have gained a pauper settlement in that town by living three years upon his own estate, or otherwise, after which the aid would be divided between the town of settlement and the State, as in Class Two.

The consideration of the provisions of the military aid law will end with some comment upon scattered topics, not properly grouped under any special head, which experience has shown to be of value to those called upon to execute the law. In all the provisions for the payments of soldiers' aid will be found the phrase "to or for" the soldier, and that phrase alone is a sufficient answer to the claim that he only has any control of the manner of expenditure of the sums given. In the adjustment of the questions that arise in settling the conditions, so that the law is carried out and the best good of the beneficiary is secured,

it must often tax the wisdom and patience of the town officers to the utmost.

Where a man has been narrow and hard for years and has given grudgingly of the bare necessities for the support of his wife, so that at last it is hard to tell which is more partially insane and unreasonable, he by reason of long indulgence of his whims, or she from a sense of wrong and a desire for revenge, it will probably be found better to appoint a neutral to care for both rather than to put a club into the hands of the wife by giving the aid to her. As in the case of State Aid, proof of need and of honorable service is forwarded by the aiding town, with estimate of sum needed, and after approval by the Commissioner the aid is given.

When the applicant lives in the place of his settlement or when he has no settlement, it is not easy to make a mistake in the handling of a case of military aid, if the above suggestions are followed, but, where he lives in a place other than that in which he is settled, the mistakes are made that cause more loss and more bitter feeling between towns than is experienced in all other soldier cases put together.

It is the purpose of the following suggestions to point out the errors usually made in these cases, and the easy way in which they can be avoided.

Where the selectmen are also overseers of the poor, they are conversant with the laws of notice and denial in cases of pauper aid, and it is by forgetting that these military cases do not come under the rulings of the pauper law that they fall into error and loss.

But in all cases both of military aid and soldiers' relief pauper laws are silent, and there is no provision for notice or denial or removal or recovery by suit.

And the reason is not far to seek, but is found in the fact that the officers of the aiding town have no official business



with the claim to military aid of a soldier having settlement in another town.

As friends or agents of the needy soldier, they or any of them may represent his case to the selectmen of the town of settlement just as any other private citizen might do, but with no official power to do anything of their own motion. Properly speaking, the soldier should make his application direct, personally, or by letter, and, if the town of settlement refuses or neglects to provide necessary relief, he may appeal to the Commissioner, but the town officers where he lives are powerless to aid as selectmen.

The case is given into the hands of the selectmen of the town of his settlement to decide, and the plain truth seems to be that the law gives the soldier no adequate remedy against their adverse action. In all three forms of aid a right of appeal to the Commissioner is given to the soldier, and the decision of the Commissioner is final so far as the language of the law can make it so, but there is no penalty incurred by refusing or neglecting to comply with his ruling, and it therefore practically rests with the town to make the final decision.

As the law governing action in military and soldiers' relief cases where the applicant lives in a place other than that of his settlement, is the same, all the remarks upon action in either of these cases apply equally to both, and will not be repeated when considering soldiers' relief.

It is a fact within common observation that it is difficult for town officers to feel the same interest in persons applying for aid by letter, who perhaps never lived in the town of settlement, and who now live a hundred miles away from it, that they would feel for a fellow-townsmen. Thus it happens that the answer is sometimes delayed or altogether omitted. When the appeal to the Commissioner brings a letter from him, the answer may not be a direct

denial of aid, but a denial that the claim is in that town. Probably there will never be a case where the express decision of the Commissioner will be traversed except for this reason, but there is no provision of law for settling such doubts by the Commissioner, and thus the worthy applicant may often suffer by a delay for which the law gives no remedy.

It is the knowledge that such questions arise, almost weekly, in some town in the State, that has caused some persons to consider the expediency of extending some of the provisions of the pauper law to the military aid and soldiers' relief laws, but the stringent limitations of that law and the practical impossibility of the enforcement of other provisions will probably be a bar to such action.

If the officers of the town of residence as the agents of an applicant, or if the applicant himself, apply to the town of settlement for military aid or soldiers' relief, and the town refuses or neglects to furnish it, perhaps alleging no settlement there as a reason, there is no present remedy except to put the case into the hands of the overseers of the poor. Then the rules of pauper law apply, and the town can be brought to face the fact. Such a course will of course involve as a primary question the consideration of whether the applicant does "stand in need of immediate relief," and also incurs the penalty of compulsory removal to the town of settlement and of a limited reimbursement, if the removal is effected within thirty days.

We hear it said continually, "You cannot make a pauper of a soldier," and, in the sense that he cannot be compelled to accept pauper aid, it is true. But where the alternative is between that and no aid, and where by refusing to accept it he plays the game of those who are depriving him of his rights, it surely is his privilege to accept the benefits of a citizen which he has not lost by becoming a soldier.

There is no limit to the amount of military aid, but any necessary amount approved by the Commissioner may be given, one-half to be paid back to the town of settlement in the following year, or the whole to be paid back to the aiding town in cases having no settlement.

It is often agreed between towns that the aiding town shall act as agent for the town of settlement in a case of military aid, and the only apparent objection to that course is where the agreement is for an indefinite time, perhaps until otherwise ordered. In that case it sometimes happens that, if the bill is not promptly sent and there is a change of officers in the town of settlement, the new board may find itself in honor bound to pay a bill of which it knew nothing. The power of a selectman to bind his town for a period after the end of his official term is a question for lawyers to settle.

Military aid is payable to soldiers of the Spanish War as well as of the Civil War and upon the same conditions.

### SOLDIERS' RELIEF.

Soldiers' relief is a form of aid wholly at the expense of the town of settlement. It is lawful to give it in addition to State aid or to military aid, and it may be given to a wife or a widow, to minor children under sixteen, and to dependent parents as well as to a soldier.

But its provisions are limited to those serving in the Civil War, and do not include soldiers of the Mexican or Spanish War.

There is no limit of time of marriage to the soldier by which his wife or widow becomes eligible, as there is in State Aid, nor is it necessary that the husband shall have served on the quota of Massachusetts.

That he was an honorable soldier, that he has a pauper

settlement, that he remains a worthy citizen, and that he is in need without fault on his own part are the indispensable conditions of this aid.

But he may live for any length of time in this State, and his widow may live for any number of years, in one place or many places, she gaining pauper settlements in each for herself and children, and if the husband does not gain, by military settlement or by any of the clauses of the settlement law, neither will ever be eligible to receive soldiers' relief. This is made clear by the opinion of Attorney-General Herbert Parker, as follows:—

OFFICE OF THE ATTORNEY-GENERAL,  
BOSTON, May 1, 1902.

Under date of April 26 the Committee on Military Affairs of Boston request my opinion upon the construction of Section 18 of Chapter 79 of the Revised Laws, the inquiry being, "Can a city or town lawfully grant relief to a woman having a legal settlement therein, who is the wife or widow of a person who served in the army or navy of the United States in the War of the Rebellion, and received an honorable discharge from all enlistments therein, who had not a legal settlement in any city or town in the Commonwealth?"

I am of opinion that "such person" in the eighth line of the section referred to, means a person who served in the army or the navy of the United States in the War of the Rebellion and received an honorable discharge, and who had a legal settlement in some city or town of the Commonwealth.

Consequently, the widow or minor children or dependent parents of persons who do not fulfil both of these requirements cannot receive aid by authority of the above section. The conditions establishing the required status must include service, honorable discharge, and a legal settlement in some city or town in the Commonwealth.

(Signed) HERBERT PARKER,  
*Attorney-General.*

Without any doubt there are phrases in this soldiers' relief law that are difficult to understand, and it is not doubtful that there are many errors committed in its execution. Starting with the central point of departure, which is the settlement of the soldier, what can we understand by the phrase "either of them" in the eighth line?

As regards the husband and wife, if we try to make it applicable to them, it is an absurdity, for he can have no settlement that she does not also have while she is his wife, and she while his wife can have none that he has not, for the purposes of soldiers' relief. "Either of them," therefore, means the dependent father and mother, or the wife after she becomes a widow, or both, or the dependent children.

But it is plain that there are cases in which the widow cannot have it in the place where she, who is "either of them," has a settlement, nor in any other place, if the husband has it not, although this law appears to say that she shall so receive soldiers' relief.

Thus a New Hampshire soldier moved to Newburyport in 1890, and lived there until he died in 1900, paying only two poll-taxes. His wife, however, gained settlement there by living five years without pauper aid for the same length of time. From 1900 to 1906 she lived in Beverly as his widow, and thus gained a settlement that set aside the Newburyport claim.

Now it is possible so to read this law as to make it imply that she could have begun to draw soldiers' relief in Newburyport in 1895 and in Beverly in 1905, but the opinion of Attorney-General Parker makes it certain that she is eligible to soldiers' relief in neither place, but only to pauper aid.

If the husband had paid his three taxes in five years in Newburyport, she would have been entitled to draw there



in 1905, and, when her five years were completed in Beverly, she would then have been eligible there.

For it must never be forgotten that none of these forms of relief to soldiers has any effect in preventing the acquisition of a settlement, as similar aid by the overseers of the poor would do. No fact is plainer than this, that there is no element of pauper aid in any provision of the law of Soldiers' Aid. And yet it is probable that there are now very many, perhaps hundreds of widows, to whom this aid has been sent many years after their settlement had changed to the place in which they have received it. This is not nearly so likely to happen in the case of soldiers, who do not, as a rule, pay poll-taxes, and so fail to gain anew.

Another question has been raised by this phrase "either of them" which may be commented upon and considered here. A soldier who has always lived in B. and has a settlement there, has an aged mother living in W. She has lived there many years as a widow, and has a settlement there. Now the son in B. is "either of them," and the mother in W. is equally "either of them." Which place shall pay the soldiers' relief? This question is answered by the following opinion, because the statute says that the wife shall have the settlement of the husband if he has any within the State.

OFFICE OF THE ATTORNEY-GENERAL,  
BOSTON, December 19, 1907.

CHARLES W. HASTINGS, ESQ.,

*Commissioner of State Aid and Pensions:*

*Dear Sir,*—You inquire where aid should be rendered to the mother of a soldier whose services entitle him and his dependent relatives to the relief provided by Revised Laws, Chapter 79, Section 18, in cases where the soldier himself is settled in one city or town and the mother has a settlement elsewhere.

The statute, so far as it is material, is as follows:—

“If a person who served in the army or navy of the United States in the war of the Rebellion has received an honorable discharge from all enlistments therein, and who has a legal settlement in a city or town in the Commonwealth, becomes, from any cause except his own criminal or wilful misconduct, poor and entirely or partially unable to provide maintenance for himself, his wife and minor children under the age of sixteen years, or for a dependent father or mother; or if such person died leaving a widow or such minor children or a dependent father or mother without proper means of support, he or they shall receive such support as may be necessary by the city or town in which they or either of them have a legal settlement.”

I am of opinion that the obvious purpose of the provision is to be interpreted to be that such persons shall be aided: first, by the city or town in which they both have a settlement if they are settled in the same town; second, by the city or town in which the soldier himself is settled, if he is settled and his dependent relative is unsettled; and, third, by the city or town in which either one of them who may be in need of aid is settled, provided they have different places of settlement.

It would follow, therefore, that in the case submitted the mother of the soldier should receive soldiers' relief from the town in which she has a legal settlement.

(Signed) DANA MALONE,

*Attorney-General.*

There is a seeming injustice in visiting a continued penalty, perhaps for many years, upon a worthy wife because she has had the misfortune to marry a worthless husband, and the same fact appears in other provisions of this law to be considered later. Perhaps some reason for these drastic provisions may be found in the fact that, when this law was enacted, the legislature had the fact in mind that one of its effects might be to call in from all the States around Massachusetts a considerable number of soldiers who would

be tempted to leave the State on whose quota they served, which State gives no special aid to soldiers, and to qualify themselves to receive the very liberal aid given here, upon the very easy tenure of living five years in some town in this State and paying out six dollars in poll-taxes during the time. Probably one would look through the world in vain in search of a place where the investment of that sum would yield any such interest as it would receive in this case.

If a soldier will move across the New Hampshire line into Tyngsborough, will buy a three-hundred-dollar house with half an acre of land, giving back a mortgage of \$250, he may at the end of three years be in the way to receive, each year, half as much as his place is worth.

Another provision of the soldiers' relief law is that the soldier shall be a worthy person, and, if he is not a worthy person, the character or necessity of his family will not avail, but he and they are absolutely cut off from the aid by his unworthiness.

This fact appears by the following opinion of the Attorney-General which is on file in the office of the Commissioner of State Aid, as also are the opinions cited above and the one that follows:—

ATTORNEY-GENERAL'S OFFICE,  
BOSTON, March 13, 1903.

CHARLES W. HASTINGS, ESQ.,

*Commissioner of State Aid and Pensions:*

Dear Sir,—You ask my opinion upon the construction of the first eleven lines of Revised Laws, Chapter 79, Section 18, the specific questions being as follows:—

“1. If a soldier debarred by criminal or wilful misconduct from the receipt of soldiers' relief is living with his family, which is otherwise eligible, will his unworthiness bar it also from relief in which he does not share?

2. If a soldier debarred as above is living away from his

family and not contributing to its support, will the family also be debarred?"

[Then after citing the section in the statute cited above, the answer is as follows:—]

It is clearly the intention of the section above quoted that the aid to be furnished to a person who has served in the army or navy of the United States in the War of the Rebellion, and has received an honorable discharge from all enlistments therein, shall be conditioned upon his worthiness to receive it; and, if he has become poor and entirely or partially unable to provide for himself and his family by reason of his own criminal or wilful misconduct, he fails to bring himself within its terms, and is excluded from all the benefits conferred by it. The right of a family of a soldier or sailor in the War of the Rebellion to receive aid under this section exists only when such soldier or sailor is in all respects eligible to receive such aid; and it must follow that where a person, otherwise eligible, is debarred by his own criminal or wilful misconduct from the relief provided, his family is also debarred from such relief, and this is true whether the person so debarred resides with his family or apart from it.

I am therefore of the opinion that both the questions submitted must be answered in the affirmative.

(Signed) HERBERT PARKER,  
*Attorney-General.*

On the other hand, bad conduct or character of the soldier's family will not bar him from soldiers' relief if he himself is all right, as appears by the following opinion, of which only the portion bearing upon the question under consideration is quoted:—

OFFICE OF ATTORNEY-GENERAL,  
BOSTON, Jan. 13, 1903.

J. F. LEWIS, M.D., *Superintendent State Adult Poor:*

*Dear Sir,*—You require my opinion upon the question of the right of an inmate of the Worcester Insane Hospital

to receive soldiers' relief under the provision of Revised Laws, Chapter 79, Section 18.

It appears that the inmate in question is the widow of a soldier who had a settlement in Boston, and who served in the army of the United States during the War of the Rebellion and received an honorable discharge from enlistments therein; and it is alleged that she is in need of the assistance afforded by the statute by reason of insanity, caused by intemperance. The Commissioner of Soldiers' Relief for the City of Boston has raised the question whether the exclusion from the benefits of the statute of a soldier who has become poor and entirely or partially unable to provide maintenance for himself and his family through his own criminal or wilful misconduct may be extended to the following provision in regard to the widow or minor children, or other dependent relatives named, of a soldier who was himself within the qualifications of the statute.

It is admitted that there was no express exception in the case of a widow or other dependents named in the statute, but it is contended that it is the spirit of the law that its benefits should not be extended to persons who become poor by reason of their own criminal or wilful misconduct.

While there is much force in this contention, I am of opinion that the exception referred to in the case of the soldier himself should not be construed to include his widow, minor children, or dependent father or mother. The purpose of the act was undoubtedly to insure the proper maintenance of worthy veterans and their families, and the aid to be furnished to the widow or other relatives of the soldier himself was in the nature of a reward to him, and an assurance that those dependent upon him should be provided for; and this ought not to be held contingent upon their conduct, especially since it might be a perplexing and difficult problem to determine whether the insanity was due wholly to wilful fault or to misfortune.

It seems more consistent with the true intent of the act to hold that the provision excepting a soldier reduced to poverty by his own wilful or criminal conduct from the benefit of the statute does not extend to the widow or other dependent relatives of a worthy veteran, and that the al-



leged fact that the person in question became insane through intemperance is not material.

(Signed) HERBERT PARKER,  
*Attorney-General.*

It is one of the singular effects of our settlement law that, while a New Hampshire family may become eligible to soldiers' relief on the easy terms mentioned above, it may readily happen that a Massachusetts soldier who was born here and has always lived here, and who served more than two years on our quota, always with honorable discharge, may with his family be absolutely ineligible to soldiers' relief. Suppose a man born in 1839, and of age in 1860. He derived a settlement from his parents, but it was not continued after 1860, and so was lost by the provisions of Chapter 425, Acts of 1898. He enlisted three times successively in nine months' regiments, but never twice on the quota of one town, and so never served for the space of one year on the quota of any town. He never was discharged for disability, and so failed to gain a military settlement. Since the war he has lived more than five years in several different towns, but in none has he paid three taxes in five years. In case of necessity for military aid this man has no settlement in the Commonwealth, and the grant must come wholly from the State treasury, and, as said above, he is absolutely ineligible to soldiers' relief.

In this connection it is impossible to forget another provision in the statute of 1898, referred to above; namely, that clause which provides that persons absent from the State for ten years at a time, after May, 1898, shall lose all claim to settlement under our laws. Reference has been made to this provision in the first part of this supplement, in its relation to settlements gained otherwise than by military service, and persons interested may find therein a statement of the merits of the general question; but there are

some considerations in the case of the veteran soldier that seem to place his case on a special basis and to demand special consideration of it here. No one could fail to see, when this phase of the provisions of the statutes was mentioned at a late meeting of the Association of Relief Officers, that to many of the members present, perhaps to a majority, the suggestion that this clause applies to veterans of the Civil War was a surprise and a source of sorrow. Obviously, they had thought of it only as a provision for setting at rest the claims of the descendants of persons who had moved to other States fifty years ago, and had never thought of it as shutting out a worthy old soldier whom failing health had driven to seek a home in a warmer climate. There is every reason why the law should not so apply. The fact that Massachusetts promised these men more than fifty years ago, that she has so far kept her word with them, and has paid out more than thirty million dollars to do it, is the best reason why she should not now break faith with any of them, least of all with him who, in addition to the weight of years which all his comrades suffer with him, has to bear the sorrow and loss that are the inevitable accompaniments of exile. It is to be hoped that the friends of the worthy old soldier will see to it that a proviso shall at once be added to the present law in something like the following terms: "Provided that nothing in this act shall be construed so as to affect the settlement of any honorably discharged soldier or sailor, nor the rights and privileges of any person holding under the same."

If the law remains as it now is, there is a certainty of the greatest disagreement in the interpretation of its provisions. Here is a case, as an illustration. A worthy officer in the navy, who has gained the right to soldiers' relief in a city, was obliged to go to Florida on account of asthma in 1900. He left his wife, whom he married in 1862, in the place where

they had lived for thirty years before, and she still lives there. He is seventy-two years old, and now has nothing for support except his pension of fifteen dollars per month, as he is no longer able to earn.

Meantime the wife, who is worn out with the care of a large family, one of whom was a dependent for forty years, has no income of any kind, and, if she may now have a small amount of soldiers' relief, it must cease in two years, when the husband will cease to have a settlement. It is no answer to such a case as this to say that they are so rare that they may pass unnoticed. Massachusetts does not so regard the rights of the very humblest of her citizens, and the same power and the same sense of justice that holds the powerful malefactor in check, will stoop, with a sweet pitying smile, to redress the sorrows of the weakest of her children.

Here, again, it may not be improper to remind the town proposing to give soldiers' relief to widow or children, that if it is not the town of settlement, it cannot assume to give it and to recover it of the town of settlement. Its officers can only act as the friends of the applicants, and procure the permission of the town of settlement to give the relief. See remarks under Military Aid, in beginning of this section.

It would be an interesting question to investigate how many soldiers now receiving aid have gained no settlement later than their military settlement. Undoubtedly, the number is very large, and it might prove that it includes a majority of soldiers now living. Probably there has been no prearranged, concerted plan on the part of the towns to omit to tax or to collect the tax, but perhaps in a hundred independent cases the idea may have dawned in the minds of the thrifty town officials that it was better, on the whole, that the debt of patriotism should be continuously borne and paid by the town on the quota of which a soldier served rather than that the line of obligation should be broken.

Of course, the State gives the assessors power to decide whom they will and whom they will not tax, but in many cases it is quite certainly the fact that it is not so much the inability of the soldier to bear the burden of the two-dollar poll-tax that causes the omission of his name from the assessment list, as it is the purpose that he shall not gain a new settlement in that particular town.

The exemption of persons eligible to State Aid or military aid or soldiers' relief from support in the almshouse is wholly in the discretion of the municipal authorities, although it is often claimed by persons with an insufficient knowledge of the law that soldiers cannot be supported in the almshouse. And the same fact is true in regard to the use of aid given to all of these soldiers in their own homes. The law places the settlement of these questions in the hands of the municipal authorities, and presumes that they are kind-hearted and prudent men in the exercise of their powers. If they decide that a certain person does not expend his aid wisely and for his best good, it is not only their right, but their duty, to see that it is so expended, either by direction to the person furnishing the supplies, or by securing the appointment of a guardian or conservator.

The tendency of careful observation is to make it clear that it will become more and more necessary, as time goes on, to secure the aid of the Probate Courts in the appointment of guardians and conservators of the estates of elderly soldiers and their wives or widows, not only in cases of insanity, but of the feebleness of age. It is not only or chiefly for the sake of economy that this should be done, but in the interests of humanity.

The law gives no appeal from their action in boarding a dependent soldier at the almshouse, when that action receives the approval of the Commissioner, and it is difficult to estimate too highly the advantage that often ensues from

a wise and judicious use of this power, which often rescues a sick man from extortion and hardship and neglect.

It must constantly be remembered that no form of aid to soldiers given by the selectmen under the provisions of Chapter 79, Revised Laws, has any pauperizing effect. It is only in the case of resort to overseers of the poor for pauper aid that this effect follows. This fact has consequences that reach further than at first appear.

Thus, if a soldier eligible to military aid, in third or fourth class, and receiving it at the expense of the State treasury in the town in which he lived, acquires a settlement in that town by living there three years on his own estate, or by living there five years and paying three poll-taxes in that time, he will upon the expiration of those periods cease to be a State charge, and will thereafter be eligible to military aid in the first or second class, one-half at the expense of the town of settlement, and to soldiers' relief wholly at its charge.

And when he has so gained, and his widow moves to another town and lives there five years after his death, she will then be eligible to soldiers' relief in the latter town, though it will be worth while to remember that the children of a settled soldier would not change with their mother, because as legitimate children they would still have the settlement of their father, and under the clause "or either of them" would call on the town of his settlement, and not upon that in which the mother had gained later.

If the child only were in need, or the mother only, only one town would be called upon, while, if both were in distress, two towns might be responsible, as often happens in pauper cases when the mother has gained or derived a later settlement than that derived from the father of the children.

The agents appointed by the State Aid Commissioner to visit persons receiving aid under the provisions of the mili-



tary law are not sent with purpose to enhance their usefulness by making sharp constructions of the provisions of the law, but to determine whether all the cases come fairly within the provisions of the law. They are instructed to report as freely to the Commissioner the case that needs a little more, as that which will not suffer if a little less were given, and they have no other purpose than to make cases of equal merit uniform throughout the State. Their visits are made in the company and presence of one or more of the town officers, who are instructed by the law to make such examinations, and their presence is welcomed by the town officers, who often find, through their visit, a division of the responsibility for an unpleasant decision, or sometimes a hint of a fact that saves the town in a month much more than the expense of the team which the town furnishes as an offset to the travelling charges of the agent. In the case of these examinations it is important to remember that the State Aid and military aid should not be paid until the very last days of the month, for it has more than once happened that a man moves from one town, which paid very early in the month, to another which paid later, and there started a claim for the same month in both.

In such a case, where both towns were sending out their aid by checks through the mail and both were failing to make their monthly returns promptly, it can be seen that great confusion and loss may follow the neglect of the plain rule to pay only to known residents, at the very end of the month, and to make return before the 10th of the following month.

The official who made his July payments July 1, and sent in his return on the 8th, giving as a reason that he could not possibly send in the return of his payments before the 10th if he did not pay on the 1st, had not really apprehended the meaning of the word "following," and is in a class by himself so far as returns are concerned.

Where the Board is of three members, and one is a justice of the peace or a notary, he may take the acknowledgment of the other two on the monthly return and on the certificate of reasons, but, where he and another only are present, he cannot take his own acknowledgment, though they are a majority of the Board.

#### THE PENSION LAW FOR AGE DISABILITY.

As town officers are often consulted by pensioners as to the provisions and practice under the pension law of February 7, 1907, it is thought that a few suggestions as to the practical working of that law may be helpful. The law is as follows:—

#### AN ACT

GRANTING PENSIONS TO CERTAIN ENLISTED MEN, SOLDIERS  
AND OFFICERS WHO SERVED IN THE CIVIL WAR AND  
THE WAR WITH MEXICO.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled:*

That any person who served ninety days or more in the military or naval service of the United States during the late civil war, or sixty days in the war with Mexico, and who has been honorably discharged therefrom, and who has reached the age of sixty-two years or over, shall, upon making proof of such facts according to such rules and regulations as the Secretary of the Interior may provide, be placed upon the pension roll, and be entitled to receive a pension as follows: In case such person has reached the age of sixty-two years, twelve dollars per month; seventy years, fifteen dollars per month; seventy-five years or over, twenty dollars per month; and such pension shall commence from the date of the filing of the application in the Bureau of Pensions after the passage and approval of this Act; *Provided*, that pensioners who are sixty-two years of age or over, and who are now receiving pensions under existing

laws, or whose claims are pending in the Bureau of Pensions, may, by application to the Commissioner of Pensions, in such form as he may prescribe, receive the benefits of this Act; and nothing herein contained shall prevent any pensioner or person entitled to a pension from prosecuting his claim and receiving a pension under any other general or special act: *Provided*, that no person shall receive a pension under any other law at the same time or for the same period that he is receiving a pension under the provisions of this act: *Provided, further*, that no person who is now receiving or shall hereafter receive a greater pension under any other general or special law than he would be entitled to receive under the provisions herein shall be pensionable under this Act.

SECT. 2. That rank in the service shall not be considered in applications filed hereunder.

SECT. 3. That no pension attorney, claim agent, or other person shall be entitled to receive any compensation for services rendered in presenting any claim to the Bureau of Pensions, or securing any pension, under this Act.

Approved February 6, 1907.

It will be seen that the only pivot on which this law centres is absolute proof of age. All the laws before 1904 were based on disability, and age was, in them, only an element in proof of identity. But it is found to be almost impossible to convince the veterans who have been receiving pensions for other reasons for many years, that they must now prove a new fact which they believe the government has been conceding without question up to the present time. "I enlisted giving that age, and it has always been admitted that it was my true age. Why do they want to quibble about it now, unless it is to hinder me from getting my rights?" Men who honestly ask this question must have very short memories, or they are betrayed by their interest into taking an untenable position.

If they will take the pains to recall the events of forty-five

years ago, they will have no doubt that there was perhaps no company, in all the regiments, in which there was not one man at least who had knowingly given an incorrect age in order to pass the recruiting officer. The conflicts between the courts hearing habeas corpus cases and parents seeking to reclaim minor sons were constant incidents of the first years of the Civil War, and nothing is more certain than that there is no reliance to be placed on the ages given in enlistment papers.

These wilful misstatements of fact now bear hard on two classes, those too young and those too old to enlist. Probably there are ten times as many of the first as of the last class.

In the presence of such proof of wilful untruth it must be plain that the rule of the Bureau of Pensions is a necessary one, and that in this, as in many other of the associations of life, the innocent are put to inconvenience for the sins of their associates.

The following circular sets forth the proof required to accompany a claim for age pension, and one of the three proofs named is indispensable:—

#### COMMONWEALTH OF MASSACHUSETTS.

##### PENSION DEPARTMENT,

##### STATE HOUSE.

In all applications for pension, or for increase of pension, on account of age, the full and correct date of birth of the applicant must be stated in the application.

It will also be necessary for the claimant to file a certified copy of the record of his birth, either from a town clerk's record under seal or oath, or a copy of a record taken from a family bible by a notary public under seal. In case neither of these certificates can be furnished, the date of birth must be established by the affidavit of witnesses.

They must be used in the order of importance given; that is, witnesses will not be accepted if there is a Bible or official record, and a Bible will not do if a record by a town clerk or registrar of vital statistics is possible, and in each form of proof other than the best the affidavit must state that the superior form or forms is or are not in existence.

As to the best form of proof,—namely, records of town clerks,—there are very few towns in which it can be found. Three or four of the Cape towns, and Mashpee, where the tribal relation of the people to the Commonwealth made some official record of increase from year to year necessary, are perhaps a majority of the towns in the State where any such record can be found which is tolerably perfect.

A curious instance of the conflict between the age given at enlistment, and the requirements of the Pension Bureau which occurred in one of these towns will not improperly close the consideration of this branch of the subject. A boy born by the record of the town clerk October 24, 1845, made oath in July, 1862, that he was born June, 1844, and in all his relations with State Aid in later life, he had felt bound to conform to his original story. So, when the age pension law went into effect, giving him twelve dollars in place of the ten-dollar disability pension, he felt that he must maintain his consistency, and made oath that he was sixty-two in June, 1906, while in reality he was not to be sixty-two until October, 1907. He did not know that the town clerk of his town where he had always lived would be required to make oath that there was no record of his birth, and that he must try to induce that official to perjure himself before his own repeated oaths would have any weight in establishing his claim. Of him it might be said as Tennyson wrote of Lancelot,—

“His honor rooted in dishonor stood,  
And faith unfaithful kept him falsely true.”



## RIGHTS OF SOLDIERS' WIVES AND WIDOWS.

A few suggestions as to the rights of wives and widows of soldiers under the State military laws and the pension laws will properly find a place here, though more than one of them has been alluded to in previous pages.

For convenient reference the provisions are here concisely assembled.

First, wives and widows otherwise qualified are eligible to State Aid and soldiers' relief, but not to military aid under any circumstances.

Second, wives must have been married before final discharge of the soldier from the army in order to receive State Aid during his lifetime, and must be living in marital relations with him.

Third, they can receive State Aid only through application of the husband.

Fourth, neither wives nor widows of Spanish War soldiers are eligible to State Aid unless the soldier died of wounds or disease incurred in the service, or unless they were married to him before his final discharge from the service, or before the 18th of May, 1899.

Fifth, no wife or widow of a soldier can receive more than four dollars State Aid.

Sixth, the widow of a Civil War soldier is eligible to State Aid on proof of his death, if she married him at any time before June 27, 1890, which is also the date of eligibility under the pension law.

Seventh, where the widow of a soldier has married a man not a soldier, and he has died, she may be re-established in the State Aid which she has lost by the second marriage, upon proof of the death of the second husband.

Eighth, the act raising the rate of all pensionable widows

from eight dollars pension to twelve, which became operative April 19, 1908, does not require any special explanation. It gives adequate remedy for the apparent injustice of giving the widow of a soldier who died from causes independent of his service a smaller amount than is given to one not more worthy or more deserving. The former ruling of the Pension Bureau by which a widow who was pensioned on account of death of her husband killed in action or dying of wounds or disease incurred in the service, lost it by remarriage to a soldier receiving a smaller rate seems to be remedied by the present rule, which gives all that would ever have been given through the first husband under the larger allowance of the Act of April 19, 1908.

Widows who are pensioned under the old rate will receive the advanced rate as a matter of course, without the intervention of an attorney, and claimants who have not filed a claim before, will file the same evidence of eligibility in the matters of marriage and of death that was formerly required.

One question relating to permanently imbecile children of soldiers merits a word of explanation, and that, perhaps, can best be given by example. A soldier who was always self-supporting after the war and who never had a pension until 1906 was unsuccessful in business in his later years, and died insolvent in 1907. He had an imbecile son born in 1880, who will probably be a charge on some one for many years to come.

As no claim for the child could be made while the father was alive, because he was not pensioned before the son was sixteen years old, but only by the widow or an appointed guardian before the son was sixteen years old, he will remain always ineligible as long as the present provisions of the law exist.

It is well to remember that, while wives are not pension-

able during the lifetime of the husbands, the Bureau is continually making decrees dividing the pension with her, when for any proper reason she is living apart from her husband.

The blanks required in the different forms of aid, are supplied free by the Commissioner.

#### PROVISIONS FOR SOLDIERS IN OTHER STATES.

For convenient reference the principal provisions for the relief of indigent soldiers in the States near our own are herewith given in a condensed form. They are probably essentially correct, as they have been received directly from the authorities charged with the disbursement of aid in the different States or collated from the latest issues of the public statutes of the several States enumerated.

##### *Maine.*

Maine has no soldiers' aid law, as the term is used in this State, but simply a provision by which a soldier or sailor pensioned for disability received in the Civil War or the Spanish War may receive, under certain conditions, a State addition to his pension.

He can receive nothing for disabilities incident to later accident or the coming on of age. Eligibility is secured by service on Maine quota in either war, with honorable discharge and consequent disability from wound or disease.

Men not on Maine quota who were resident in Maine both at the time of enlistment and of application for relief, if they have lived five years in that State before applying for relief, are eligible to the State pension.

Aid may be received by persons within either of these classes by application to the governor and council who issue certificates for the payment, quarterly, by the treasury

of the town, to an amount not exceeding eight dollars a month to be repaid from the State treasury.

The widow and minor children under twelve, but apparently not the wife, may receive not exceeding this same amount under the same conditions, and a drafted soldier may receive four dollars a month pension for service in the Aroostook War.

### *New Hampshire.*

An honorably discharged soldier or sailor who served on the quota of this State in the Civil or Spanish War, and who is poor, and his wife or widow and minor children unable to maintain themselves, shall be supported in such place other than an almshouse in the town in which they live as may be provided by the overseers of the poor or as the county commissioners may provide.

The soldier must have lived in the State three years before making application for the aid, and must not use intoxicating drink to such an extent as to prevent work. He must show evidence that he applies all his pension to the support of himself and his dependent family. He must furnish a certificate of a reputable doctor that he is unable to perform manual labor. Any neglect to perform all these conditions when applying relieves the town or county liable for his support from the provisions of this section, and the soldier may thereafter be supported at the county or town almshouse.

Any overseer or other public relieving officer who refuses to decline to carry out these provisions shall forfeit fifty dollars, except when he shall reasonably consider that compliance would be a menace to the public health, safety, or peace.

It will be observed that there is no provision in this statute for any relief outside of public institutions except sup-

plies. It is impossible to learn the amount of aid given under this law. It has been in existence since March 22, 1901.

*Rhode Island.*

In 1907 Rhode Island gave a little more than \$10,000, out of an appropriation of \$12,000 to certain applicants in 1,800 grocery orders of an average amount of \$5.50 each. It gives no money. It provides for an expense of burial of \$35 and headstone \$15, to be paid by the treasurer of the town in which the soldier dies.

In 1898 an act was passed that towns may appropriate for the benefit of soldiers in the form of outdoor relief a maximum sum of \$4 a week for any one family.

In Rhode Island also there seems to be no provision for cash payment.

*Vermont.*

Vermont makes no provision for living soldiers except in soldiers' homes, but provides that, when an honorably discharged soldier, of the Civil War only, dies, the commander or adjutant of his post, or, if he belongs to no post, a majority of the selectmen of the town in which he dies, may make oath of the fact of death and impoverished condition to the auditor of accounts, who shall thereupon allow \$50 for burial and headstone.

*Connecticut.*

Honorably discharged invalid soldiers and sailors of the Civil War, who were resident in the State at time of enlistment and of application for relief, are admitted to the Soldiers' Home, to the Hospital for Dipsomaniacs and Drugs, the Hospital for Insane or any other incorporated hospital



at the expense of the State, but if the soldier is able, he shall pay board in any such institution.

While the soldier is thus supported, the soldiers' hospital board which admitted him may authorize the authorities charged with the support of the poor to pay to his wife and minor children less than sixteen years old not more than two dollars a week for their support, and the State reimburses for such expenditure.

Soldiers of other States who need relief, and who have lived five years continuously in this State before making application, may be admitted to Soldiers' Home and to the Hospital for Insane on the same terms, but there is no provision for the support of their families while there.

The soldiers' hospital board is composed of the governor, adjutant-general, surgeon-general, and two Connecticut veterans nominated by the Post. Soldiers or sailors of the Civil or Spanish War dying in the State, or whose service was credited to the State, or who were buried outside the State, shall be entitled to burial expense to the amount of thirty-five dollars, if needed, with sixteen dollars for headstone, in some place not exclusively used for burial of the pauper dead.

Children less than fourteen years old of soldiers who died of wounds received or disease contracted and who are not in any almshouse shall receive \$1.50 a week from the State treasury.

Total State appropriation for two years ending September 30, 1909, for support in Soldiers' Home, Dipsomaniac Hospital, and Hospital for the Insane, \$255,000; for their families, \$60,000; for their children, \$1,700; and for burial expenses, \$26,000; making a total of \$342,700, or \$171,350 per year.

By act passed May, 1907, the State hospital board may allow for the support of a soldier or sailor in his own home a sum equal to the cost of his support in the Soldiers' Home.

*New York.*

Aid to soldiers in New York is wholly under the direction of the G. A. R. posts. No definite sum is appropriated for the reimbursement of such aid by the State, and there seems to be no provision in this statute by which the number of persons aided, or the amount given to each case, or the kind of aid given, can be known.

Chapter 475, passed April, 1900, provides that no poor and indigent soldier or sailor who was in the military or naval service of the United States, and who has lived in New York for a year, nor his family, shall be sent to any almshouse, but shall be relieved and provided for at his home in the city or town in which he resides, and the proper auditing board or superintendent of the poor shall provide such sums of money as may be necessary, to be drawn upon by the commander or adjutant of any post on recommendation of the relief committee.

The sums so expended shall be reimbursed by the Comptroller, upon presentation of proper vouchers.

The act seems to make no provision for service on the quota of the State, or for honorable discharge, or for good character and conduct.

June 9, 1903, a law was passed appropriating about \$20,000 a year for the support of sick and disabled soldiers and sailors apparently not in any institution.

BEACHMONT, March 31, 1909.





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